



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

David E. Dise
Director

SOLICITATION AMENDMENT#2

RFP#1012538

October 20, 2011

PAGE 1 of 1 FOR THE PROCUREMENT OF:

Operation, Management and Marketing of a Public Market with Related Activities on the Silver Spring Veterans Plaza

ALL SOLICITATION AMENDMENTS MUST BE ACKNOWLEDGED BY THE OFFEROR PRIOR TO THE HOUR AND DATE SPECIFIED IN THE SOLICITATION (AS AMENDED) FOR RECEIPT OF OFFERS. **FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY BE CAUSE TO REJECT OFFER.**

DESCRIPTION OF AMENDMENT

Change #1

Proposal due date has been postponed indefinitely and a subsequent solicitation amendment will be issued to establish a new proposal submission date, and any potential changes.

THERE ARE NO MORE CHANGES.

THE SOLICITATION PROVISION ENTITLED "SOLICITATION AMENDMENT" IS APPLICABLE TO THIS AMENDMENT. THE CHANGES SET FORTH BELOW ARE HEREBY INCORPORATED INTO THE ABOVE-CITED SOLICITATION. THE DATE SPECIFIED FOR RECEIPT OF OFFERS **(XXXX) HAS BEEN EXTENDED.**

ISSUED BY: _____
David E. Dise, CPRO,
Director, Department of General Services

NAME OF OFFEROR: _____
(Type or print)

NAME AND TITLE OF PERSON
AUTHORIZED TO SIGN: _____
(Type or print)

OFFEROR'S SIGNATURE: _____ DATE : _____

Office of Procurement



DEPARTMENT OF GENERAL SERVICES

Isiah Leggett
County Executive

David E. Dise
Director

SOLICITATION AMENDMENT#1

RFP#1012538

October 12, 2011

PAGE 1 of 2 FOR THE PROCUREMENT OF:

Operation, Management and Marketing of a Public Market with Related Activities on the Silver Spring Veterans Plaza

ALL SOLICITATION AMENDMENTS MUST BE ACKNOWLEDGED BY THE OFFEROR PRIOR TO THE HOUR AND DATE SPECIFIED IN THE SOLICITATION (AS AMENDED) FOR RECEIPT OF OFFERS. **FAILURE TO ACKNOWLEDGE AN AMENDMENT MAY BE CAUSE TO REJECT OFFER.**

DESCRIPTION OF AMENDMENT

Change #1

REPLACE Page 1 with REVISED page 1; correcting the address for the Optional Pre-submission conference (changes are in ***bold and italicized***)

THERE ARE NO MORE CHANGES.

THE SOLICITATION PROVISION ENTITLED "SOLICITATION AMENDMENT" IS APPLICABLE TO THIS AMENDMENT. THE CHANGES SET FORTH BELOW ARE HEREBY INCORPORATED INTO THE ABOVE-CITED SOLICITATION. THE DATE SPECIFIED FOR RECEIPT OF OFFERS **(XXXX) IS NOT EXTENDED.**

ISSUED BY: _____

David E. Dise, CPPO,
Director, Department of General Services

NAME OF OFFEROR: _____
(Type or print)

NAME AND TITLE OF PERSON
AUTHORIZED TO SIGN: _____
(Type or print)

OFFEROR'S SIGNATURE: _____ DATE : _____

Office of Procurement

**REQUEST FOR PROPOSALS**

RFP# 1012538

Operation, Management and Marketing of a Public Market with Related Activities on the Silver Spring Veterans Plaza

October 3, 2011

Montgomery County, Maryland is soliciting proposals for the provision of the above-referenced goods/services as outlined in this document.

One original and 4 copies of your proposal must be submitted in a sealed envelope/package no later than 3:00 P.M. on November 4, 2011, to the Department of General Services, Office of Procurement, Rockville Center, 255 Rockville Pike, Suite 180, Rockville, Maryland 20850-4166. The sealed proposal package must be clearly marked with the solicitation number, due date, and due time.

There will be an optional pre-submission conference at 10:00 AM on October 14, 2011 at I Veterans Place, Silver Spring, MD 20910, 2nd Floor.

The County will not accept fax proposals or proposals sent via e-mail. All faxed or e-mailed proposals will be returned.

Should you have any questions regarding the technical information or the scope of services contained in this solicitation, please contact Jewru Bandeh, Operations Manager, Silver Spring Civic Building at (240) 777-5308.

Should you have any questions regarding procurement information (i.e., terms and conditions) contained in this solicitation, please contact Jeffrey Steed at (240) 777-9914.

(The Office of Procurement will check one of the boxes below to indicate whether this RFP is a services contract, a Construction Contract, or neither)

This is a Services Contract (see Section A, Services Contract):	X
or	
This is a Construction Contract (See Attachment H):	
or	
This is not a Services Contract (disregard Section A, Services Contract) and is not a Construction Contract (disregard Attachment H):	

David E. Dise, Director

Department of General Services

Revised 08/10

Revised Page 1 per Solicitation Amendment No.1

Local Small Business Reserve Program (LSBRP) Notice

RFP # 1012538

Operation, Management and Marketing of a Public Market with Related Activities on the Silver Spring Veterans Plaza

This solicitation is reserved for only self-certified local small businesses timely registered with the County's LSBRP. This solicitation thus comes under County Code, sections 11B-17A; 11B-65; 11B-70 and Executive Regulation 21-05AM. These documents can be accessed through the LSBRP web site at (www.montgomerycountymd.gov/LSBRP).

LSBRP criteria are based on a firm's location, ownership status, and the level of pre-existing contracts with the County. Submitting a bid/proposal constitutes willfully stating your firm is a self-certified Local Small Business. Therefore, if you wish to submit a bid/proposal for this solicitation adhering to the LSBRP, you must:

1. Self-certify as a LSBRP firm prior to the bid's/proposal's due date. If your LSBRP self-certification is not registered prior to the bid's/proposal's due date, then your bid will be deemed non-responsive and rejected or your proposal will be deemed unacceptable and removed from consideration. Go to the LSBRP web site (www.montgomerycountymd.gov/LSBRP) and follow the instructions under "Register."
2. After the IFB opens or the RFP closes and upon notification by the County, you must provide within three (3) business days the LSBRP documentation of:
 - all of its business location(s) (if more than one),
 - number of employees by location
 - annual gross revenue of the business for the past three fiscal years.

(The preferred documents are copy of a lease, Maryland Unemployment Insurance Contribution Report (summary or quarterly), and Financial Statement/Tax Returns. At the discretion of the LSBRP, an alternative type of documents might be accepted.)

If, after receipt of these documents, the LSBRP finds that your firm does not meet the LSBRP requirements, then your bid will be deemed non-responsive and rejected or your proposal will be deemed unacceptable and removed from further consideration. For questions, contact the LSBRP (240-777-9913).

Notice to Offerors

Request for Proposals

1012538

Operation, Management and Marketing of a Public Market with Related Activities on the Silver Spring Veterans Plaza

This solicitation may be subject to the County's Wage Requirements law for service contracts. If this solicitation is subject to that law, then the appropriate space will be marked in the box denoting "This is a Services Contract", at the bottom of the next page (page 1). And, in this event, the "Wage Requirements for Services Contract Addendum" (Attachment "G") should be attached.

If this solicitation is subject to the Wage Requirements law (see above explanation), then the "Wage Requirements Certification" and, if applicable, the "501(c)(3) Nonprofit Organization's Employee's Wage and Health Insurance Form" (see Attachment "G"), must be completed and submitted with your proposal. If you fail to submit and complete the required material information on the form(s), your proposal may be unacceptable under County law and may be rejected.

As noted in Attachment "G" (Section A, Wage Requirements Compliance), a contractor required to comply with the Wage Requirements Law must quarterly (January, April, July, and October for the prior quarter) submit certified payroll records for all employees, and any subcontractors, governed by the Wage Requirements Law, for each payroll period to the Office of Business Relations and Compliance, Attn: Wage Program Manager. These payroll records must include the following for each employee and any subcontractors: name; address; position/title; daily straight time hours worked; daily overtime hours worked; straight time hourly pay rate; overtime hourly pay rate; any deduction for health insurance; total gross wages paid for each period; and total net wages paid after any additions and deductions for each pay period.

Please note the information pertaining to the Wage Requirements law is on Attachment "G". Please note for services contracts, you can find the current mandatory wage rate, per hour, payable to employees under Section 11B-33A of the County Code, by going to the website (www.montgomerycountymd.gov), and clicking on "Departments," "General Services," "Office of Procurement," and then "Living Wage." . Also, the Wage Requirements law ("Living Wage") is available at the same website.



REQUEST FOR PROPOSALS

RFP# 1012538

Operation, Management and Marketing of a Public Market with Related Activities on the Silver Spring Veterans Plaza

October 3, 2011

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One original and 4 copies of your proposal must be submitted in a sealed envelope/package no later than 3:00 P.M. on November 4, 2011, to the Department of General Services, Office of Procurement, Rockville Center, 255 Rockville Pike, Suite 180, Rockville, Maryland 20850-4166. The sealed proposal package must be clearly marked with the solicitation number, due date, and due time.

There will be an optional pre-submission conference at 10:00 AM on October 14, 2011 at Veterans Place, Silver Spring, MD 20910, 2nd Floor.

The County will not accept fax proposals or proposals sent via e-mail. All faxed or e-mailed proposals will be returned.

Should you have any questions regarding the technical information or the scope of services contained in this solicitation, please contact Jewru Bandeh, Operations Manager, Silver Spring Civic Building at (240) 777-5308.

Should you have any questions regarding procurement information (i.e., terms and conditions) contained in this solicitation, please contact Jeffrey Steed at (240) 777-9914.

(The Office of Procurement will check one of the boxes below to indicate whether this RFP is a services contract, a Construction Contract, or neither)

This is a Services Contract (see Section A, Services Contract):	X
--	----------

or

This is a Construction Contract (See Attachment H):	
--	--

or

This is not a Services Contract (disregard Section A, Services Contract) and is not a Construction Contract (disregard Attachment H):	
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David E. Dise, Director
Department of General Services

Revised 08/10

RFP # 1012538
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Montgomery County, Maryland
Acknowledgment Page

ACKNOWLEDGMENT

The offeror must include a signed acknowledgment that all the terms and conditions of the offer may, at the County's option, be made applicable in any contract issued as a result of this solicitation. Offers that do not include such an acknowledgment may be rejected. Executing and returning (with the offer) the acknowledgment shown below will satisfy this requirement.

The undersigned agrees that all the terms and conditions of this solicitation and offer may, at the County's option, be made applicable in any contract issued as a result of this solicitation.

Business Firm's Typed Name: _____

Printed Name and Title of
Person Authorized to Sign Proposal: _____

Signature: _____ Date: _____

NAME AND SIGNATURE REQUIREMENTS FOR PROPOSALS AND CONTRACTS

The correct legal business name of the offeror must be used in all contracts. A trade name (i.e., a shortened or different name under which the firm does business) must not be used when the legal name is different. Corporations must have names that comply with State Law. The offeror's signature must conform to the following:

All signatures must be made by an authorized officer, partner, manager, member, or employee. The signing of this offer or a contract is a representation by the person signing that the person signing is authorized to do so on behalf of the offeror or contractor.

By submitting a proposal under this Solicitation, the Offeror agrees that Montgomery County has within 120 days after the due date in order to accept the proposal.

ACKNOWLEDGMENT OF SOLICITATION AMENDMENTS

The Offeror acknowledges receipt of the following amendment(s) to the solicitation:

Amendment Number	Date

SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES

The following provisions are applicable to this solicitation:

ACCEPTANCE TIME

By submitting a proposal under this solicitation, the offeror agrees that Montgomery County has within 120 days after the due date in order to accept the proposal. Montgomery County reserves the right to reject, as unacceptable, any offer that specifies less than 120 days of acceptance time. Upon mutual agreement between the County and the offeror, the acceptance time for the offeror's proposal may be extended.

ACKNOWLEDGMENT

The offeror is to include the signed acknowledgment (Page 4) indicating agreement with all the terms and conditions of the solicitation.

CONTRACT DOCUMENTS

The following documents will be incorporated into the contract resulting from this solicitation:

1. General Conditions of Contract Between County & Contractor.
2. Minority Business Program & Offeror's Representation.
3. Minority-Owned Business Addendum to the General Conditions of Contract Between County & Contractor.
4. Minority, Female, Disabled Person Subcontractor Performance Plan.
5. Offeror's Certification of Cost & Price (for contracts above \$100,000)
6. Wage Requirements for Services Addendum and Wage Requirements Certification
7. All representations and certifications listed in this document.

DETERMINATION OF RESPONSIBILITY

The Offeror has the burden of demonstrating affirmatively its responsibility in connection with this solicitation. A debarred potential offeror must automatically be considered non-responsible in connection with this solicitation. The County reserves the right to consider an offeror non-responsible who has previously failed to perform properly or to complete, in a timely manner, contracts of a similar nature, or if investigation shows the offeror unable to perform the requirements of the contract.

An offeror may be requested at any time by the Director, Department of General Services or the Using Department to provide additional information, references and other documentation and information that relate to the determination of responsibility. Failure of an offeror to furnish requested information may constitute grounds for a finding of non-responsibility of the prospective offeror.

The Director may deny the award, renewal, or assignment of a contract to or for any offeror who is in default of payment of any money due the County.

The factors, which may be considered in connection with a determination of responsibility, include:

1. The ability, capacity, organization, facilities, and skill of the offeror to perform the contract or provide the goods or services required;
2. The ability of the offeror to perform the contract or provide the services within the time specified without delay, interruption or interference;
3. The integrity, reputation, and experience of the offeror, and its key personnel;
4. The quality of performance of previous contracts or services for the County or other entities. Past unsatisfactory performance, for any reason, is sufficient to justify a finding of non-responsibility;
5. The previous and existing compliance by the offeror with laws and ordinances relating to the contract or services;

SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES (continued)

6. The sufficiency of financial resources of the offeror to perform the contract or provide the services;
7. The certification of an appropriate accounting system, if required by the contract type;
8. A bid bond and the offeror's evidence of ability to furnish a performance bond may be considered evidence of responsibility; and
9. Past debarment by the County or other entity.

JOINT PROCUREMENT

The following entities within Montgomery County must be able to purchase directly from any contract resulting from this Solicitation:

Maryland-National Capital Park & Planning Commission (M-NCPPC)
Montgomery College (MC)
Montgomery County Public Schools (MCPS)
Montgomery County Revenue Authority
Montgomery County Housing Opportunities Commission (HOC)
Washington Suburban Sanitary Commission (WSSC)
Municipalities & Special Tax Districts in Montgomery County

While this solicitation is prepared on behalf of Montgomery County, it is intended to apply for the benefit of the above-named entities as though they were expressly named throughout the document. Each of these entities may purchase from the successful offeror under the same prices and services of the contract with Montgomery County, in accordance with each entity's respective laws and regulations, or an entity may choose not to procure from the successful offeror at the entity's sole discretion. If one of the above-named entities elects to purchase under the contract, the price shall be determined by using unit costs and other pertinent costs that are provided in the offer. Montgomery County shall not be held liable for any costs, payments, or damages incurred by the above jurisdictions.

LATE PROPOSALS

Responses to this Solicitation received after the date and time specified in a solicitation are considered late and may not, under any circumstances, be considered for any award resulting from the solicitation.

MINORITY, FEMALE, DISABLED PERSON PROGRAM COMPLIANCE

Under County law, this solicitation is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program. Further information regarding the County's MFD program is contained within this solicitation (see the attachment entitled "Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor" and its companion document entitled "Minority, Female, Disabled Person Subcontractor Performance Plan").

MONTGOMERY COUNTY CODE AND PROCUREMENT REGULATIONS

The Montgomery County Code and the Montgomery County Procurement Regulations are applicable to this solicitation and any contract awarded pursuant to this solicitation.

OPTIONAL PRE-SUBMISSION CONFERENCE

If a Pre-Submission Conference is held, it is optional, though highly recommended that prospective offerors attend this pre-submission conference. For information regarding the date, time, and place of the conference, please see page 1 of this solicitation.

PAYMENT TERMS

SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES (continued)

The County's payment terms are net thirty (30) days.

PROPOSALS

Sealed proposals are due in the Office of Procurement, 255 Rockville Pike, Suite 180, Rockville MD 20850-4166, for the purchase of supplies, material, equipment and/or services in accordance with the instructions, terms, conditions and specifications and/or scope of services set forth in this solicitation. Proposals must be returned in a sealed envelope, and clearly marked with the RFP number, due date, and time. Proposals received after the time specified will be returned unopened to the offeror. The County will not be responsible for proposals received after the due date, due to premature or late deliveries, postal/courier delays, or opening of a proposal if it is improperly addressed or identified.

PROPOSAL WITHDRAWAL/MODIFICATION

Proposals may be withdrawn or may be modified by the offeror upon receipt of a written request received before the time specified for due date and due time. Requests to withdraw or modify an offeror's proposal received after the solicitation due date and time will not be considered.

PROPRIETARY & CONFIDENTIAL INFORMATION

This is to notify prospective offerors that the County has unlimited data rights regarding proposals submitted in response to its solicitations. Unlimited data rights mean that Montgomery County has the right to use, disclose, reproduce, prepare derivative works, distribute copies to the public, or perform publicly and display publicly any information submitted by offerors in response to this or any solicitation issued by the County. However, information that is deemed to be confidential commercial or financial information as defined by the Maryland Information Act, State Government Article 10-617, will be exempted from disclosure if the submitter can show that release of such information would cause substantial competitive harm to the submitter's competitive position. It is the responsibility of the offeror to clearly identify each part of his/her offer that is confidential commercial or financial information by stamping the bottom right-hand corner of each pertinent page with one inch bold face letters stating the words "confidential" or "proprietary." The offeror agrees that any portion of the proposal that is not stamped as proprietary or confidential will be deemed not to be proprietary or confidential.

PROTESTS

All protests made pursuant to this solicitation must be in writing and delivered to the Director, Department of General Services: (a) within ten (10) days after the Director, Department of General Services, publicly posts the proposed award, if the offeror seeks as a remedy the award of the contract or costs under 11B-36(h) of the Montgomery County Code, or (b) before the submission date for proposals, if the offeror seeks as a remedy the cancellation or amendment of the solicitation. Each protest must contain a protest filing fee in the amount of \$500 (US currency); if the fee is paid by check, then the check must be made out to Montgomery County Government. The Director, Department of General Services, may return the filing fee to the protesting offeror, if the protest is sustained. The Director, Department of General Services, must dismiss any protest not timely received.

Only an offeror who is "aggrieved" may file a protest. Aggrieved means that the offeror who is filing the protest may be eligible for an award of the contract if the protest is sustained (e.g., a fourth ranked offeror is not aggrieved unless the grounds for a protest, if sustained, would disqualify the top three ranked offerors or would require that the solicitation be reissued).

Each protest must contain the following: identification of the solicitation; the name, address and telephone number of the protesting offeror; a statement supporting that the offeror is aggrieved; and specification of all

SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES (continued)

grounds for the protest, including submission of detailed facts and all relevant documents, citation to relevant language in the solicitation, regulations, or law relied upon; and, all other matters which the offeror contends supports the protest. The burden of production of all relevant evidence, data and documents, and the burden of persuasion, to support the protest is on the offeror making the protest.

PUBLIC POSTING

It is the responsibility of the offerors to keep informed of the current status of any proposed awardee for contracts in which they are interested as per Section 3.2.2 of the Procurement Regulations.

Of particular importance is the fact that the notice of a decision to make an award will be accomplished by a public posting of the proposed awardee

Information regarding the proposed awardee(s) under this solicitation or any solicitation issued by the Montgomery County Office of Procurement will be posted on Montgomery County's website at:

www.montgomerycountymd.gov/content/DGS/pro/public_awards.asp.

QUALIFICATION OF OFFERORS

Offerors may be required to furnish satisfactory evidence that they are qualified and regularly engaged in performing the services for which they are submitting a proposal and maintain a regularly established place of business. An authorized representative of the County may visit any prospective contractor's plant, place of business or place where the services are performed to determine ability, capacity, reliability, financial stability and other factors necessary to perform the contract. If so requested, an offeror may be required to submit information about its reputation, past performance, business and financial capability and other factors that demonstrate that the offeror is capable of satisfying the County's needs and requirements for a specific contract.

QUESTIONS

All technical and nontechnical questions pertaining to this solicitation should be directed to the individuals whose names are indicated on Page 1.

SERVICES CONTRACT (County Code 11B-33A)

Under County law, a solicitation for a contractor to provide services is subject to the Montgomery County Code regarding compliance with certain wage requirements payable to the Contractor's employees. Additional information regarding the County's wage requirements is contained within this solicitation (see the provision entitled "Wage Requirements for Services Contracts Addendum to The General Conditions of Contract between County and Contractor" and its companion document entitled "Wage Requirements Certification"). If Contractor fails to submit and complete the required material information on the Wage Requirements Certification form, its proposal may be deemed unacceptable under County law and may be rejected.

SOLICITATION AMENDMENTS

In the event that an amendment to this solicitation is issued, all solicitation terms and conditions will remain in effect unless they are specifically changed by the amendment. Offerors are responsible for checking the website at http://www.montgomerycountymd.gov/content/DGS/PRO/public_solicitations.asp periodically to remain informed of any solicitation amendments. Offerors must acknowledge receipt of such solicitation amendments, to the place designated, and prior to the hour and date specified in the solicitation (or as amended) for receipt of offers. Offerors may acknowledge solicitation amendments by one of the following:

1. By returning one signed copy of the amendment either with the Offeror's response to the solicitation or by sending a signed copy of the amendment separately to the Office of Procurement.
2. By acknowledging receipt of the amendment on the Acknowledgment (see page 4) submitted.

SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES (continued)

3. By stating that the amendment is acknowledged in a signed letter that refers to the solicitation and amendment numbers.

SOLICITATION PREPARATION EXPENSES

All costs incurred in the preparation and submission of solicitations will be borne by the offeror and shall not be incurred in anticipation of receiving reimbursement from the County.

VERBAL EXPLANATIONS

Verbal explanations or instructions given by a Montgomery County employee to an offeror in regard to this solicitation will not be binding on the County. Any information given to an offeror in response to a request will be furnished to all offerors as an amendment to this solicitation, if such information is deemed necessary for the preparation of solicitations, or if the lack of such information would be detrimental to the uninformed offerors. Such amendments only, when issued by the Director, Department of General Services, will be considered as being binding on the County.

END SECTION A - INSTRUCTIONS, CONDITIONS AND NOTICES

SECTION B - GENERAL CONDITIONS OF CONTRACT BETWEEN COUNTY & CONTRACTOR**1. ACCOUNTING SYSTEM AND AUDIT, ACCURATE INFORMATION**

The contractor certifies that all information the contractor has provided or will provide to the County is true and correct and can be relied upon by the County in awarding, modifying, making payments, or taking any other action with respect to this contract including resolving claims and disputes. Any false or misleading information is a ground for the County to terminate this contract for cause and to pursue any other appropriate remedy. The contractor certifies that the contractor's accounting system conforms with generally accepted accounting principles, is sufficient to comply with the contract's budgetary and financial obligations, and is sufficient to produce reliable financial information.

The County may examine the contractor's and any first-tier subcontractor's records to determine and verify compliance with the contract and to resolve or decide any claim or dispute arising under this contract. The contractor and any first-tier subcontractor must grant the County access to these records at all reasonable times during the contract term and for 3 years after final payment. If the contract is supported to any extent with federal or state funds, the appropriate federal or state authorities may also examine these records. The contractor must include the preceding language of this paragraph in all first-tier subcontracts.

2. AMERICANS WITH DISABILITIES ACT

The contractor agrees to comply with the nondiscrimination requirements of Titles II and III, and other provisions, of the Americans with Disabilities Act of 1990, Pub. Law 101-336, and ADA Amendments Act of 2008, Pub. Law 110-325, as amended, currently found at 42 U.S.C., § 12101, et seq.

3. APPLICABLE LAWS

This contract must be construed in accordance with the laws and regulations of Maryland and Montgomery County. The Montgomery County Procurement Regulations are incorporated by reference into, and made a part of, this contract. In the case of any inconsistency between this contract and the Procurement Regulations, the Procurement Regulations govern. The contractor must, without additional cost to the County, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations. For purposes of litigation involving this contract, except for contract Disputes discussed in paragraph 8 below, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County.

The prevailing wage law (County Code §11B-33C) applies to construction contracts. Specifically, under County law, a County financed construction contract is subject to the Montgomery County Code regarding compliance with the prevailing wage paid to construction workers, as established for the County by the Maryland State Commissioner of Labor and Industry. Additional information regarding the County's prevailing wage requirements is contained within this solicitation/contract (see the provision entitled "Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor").

Furthermore, certain non-profit and governmental entities may purchase supplies and services, similar in scope of work and compensation amounts provided for in a County contract, using their own contract and procurement laws and regulations, pursuant to the Maryland State Finance and Procurement Article, Section 13-101, et seq.

Contractor and all of its subcontractors must comply with the provisions of County Code §11B-35A and must not retaliate against a covered employee who discloses an illegal or improper action described in §11B-35A. Furthermore, an aggrieved covered employee under §11B-35A is a third-party beneficiary under this Contract, who may by civil action recover compensatory damages including interest and reasonable attorney's fees, against the contractor or one of its subcontractors for retaliation in violation of that Section. (Effective June 28, 2010).

Contractor and all of its subcontractors must provide the same benefits to an employee with a domestic partner as provided to an employee with a spouse, in accordance with County Code §11B-33D. An aggrieved employee, is a third-party beneficiary who may, by civil action, recover the cash equivalent of any benefit denied in violation of §11B-33D or other compensable damages. (Effective January 1, 2011).

4. ASSIGNMENTS AND SUBCONTRACTS

The contractor may not assign or transfer this contract, any interest herein or any claim hereunder, except as expressly authorized in writing by the Director, Department of General Services. Unless performance is separately and expressly waived in writing by the Director, Department of General Services, an assignment does not release the contractor from responsibility for performance of this contract. Unless otherwise provided in the contract, the contractor may not contract with any other party for furnishing any of the materials or services herein contracted for without the written approval of the Director, Department of General Services. Any subcontract for any work hereunder must comport with the terms of this Contract and County law, and must include any other terms and conditions that the County deems necessary to protect its interests.

5. CHANGES

The Director, Department of General Services, may unilaterally change the work, materials and services to be performed. The change must be in writing and within the general scope of the contract. The contract will be modified to reflect any time or money adjustment the contractor is entitled to receive. Contractor must bring to the Contract Administrator, in writing, any claim about an adjustment in time or money resulting from a change, within 30 days from the date the Director, Department of General Services, issued the change in work, or the claim is waived. Any failure to agree upon a time or money adjustment must be resolved under the "Disputes" clause of this contract. The contractor must proceed with the prosecution of the work as changed, even if there is an unresolved claim. No charge for any extra work, time or material will be allowed, except as provided in this section.

6. CONTRACT ADMINISTRATION

A. The contract administrator, subject to paragraph B below, is the Department representative designated by the Director, Department of General Services, in writing and is authorized to:

- (1) serve as liaison between the County and the contractor;
- (2) give direction to the contractor to ensure satisfactory and complete performance;
- (3) monitor and inspect the contractor's performance to ensure acceptable timeliness and quality;
- (4) serve as records custodian for this contract, including wage and prevailing wage requirements;
- (5) accept or reject the contractor's performance;
- (6) furnish timely written notice of the contractor's performance failures to the Director, Department of General Services, and to the County Attorney, as appropriate;
- (7) prepare required reports;
- (8) approve or reject invoices for payment;
- (9) recommend contract modifications or terminations to the Director, Department of General Services;
- (10) issue notices to proceed; and

(11) monitor and verify compliance with any MFD Performance Plan.

- B. The contract administrator is NOT authorized to make determinations (as opposed to recommendations) that alter, modify, terminate or cancel the contract, interpret ambiguities in contract language, or waive the County's contractual rights.

7. COST & PRICING DATA

Chapter 11B of the County Code and the Montgomery County Procurement Regulations require that cost & pricing data be obtained from proposed awardes/contractors in certain situations. The contractor guarantees that any cost & pricing data provided to the County will be accurate and complete. The contractor grants the Director, Department of General Services, access to all books, records, documents, and other supporting data in order to permit adequate evaluation of the contractor's proposed price(s). The contractor also agrees that the price to the County, including profit or fee, may, at the option of the County, be reduced to the extent that the price was based on inaccurate, incomplete, or noncurrent data supplied by the contractor.

8. DISPUTES

Any dispute arising under this contract that is not disposed of by agreement must be decided under the Montgomery County Code and the Montgomery County Procurement Regulations. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. Subject to subsequent revocation or alteration by the Director, Department of General Services, the head of the County department, office or agency ("Department Head") of the contract administrator is the designee of the Director, Department of General Services, for the purpose of dispute resolution. The Department Head or his/her designee, must forward to the Director, Department of General Services, a copy of any written resolution of a dispute. The Department Head may delegate this responsibility to another person (other than the contract administrator). A contractor must notify the contract administrator of a claim in writing, and must attempt to resolve a claim with the contract administrator prior to filing a dispute with the Director, Department of General Services or designee. The contractor waives any dispute or claim not made in writing and received by the Director, Department of General Services, within 30 days of the event giving rise to the dispute or claim, whether or not the contract administrator has responded to a written notice of claim or resolved the claim. The Director, Department of General Services, must dismiss a dispute that is not timely filed. A dispute must be in writing, for specific relief, and any requested relief must be fully supported by affidavit of all relevant calculations, including cost and pricing information, records, and other information. At the County's option, the contractor agrees to be made a party to any related dispute involving another contractor.

9. DOCUMENTS, MATERIALS AND DATA

All documents materials or data developed as a result of this contract are the County's property. The County has the right to use and reproduce any documents, materials, and data, including confidential information, used in the performance of, or developed as a result of, this contract. The County may use this information for its own purposes, including reporting to state and federal agencies. The contractor warrants that it has title to or right of use of all documents, materials or data used or developed in connection with this contract. The contractor must keep confidential all documents, materials, and data prepared or developed by the contractor or supplied by the County.

10. DURATION OF OBLIGATION

The contractor agrees that all of contractor's obligations and warranties, including all requirements imposed by the Minority Owned Business Addendum to these General Conditions, if any, which directly or indirectly are intended by their nature or by implication to survive contractor performance, do survive the completion of performance, termination for default, termination for convenience, or termination by mutual consent of the contract.

11. ENTIRE AGREEMENT

There are no promises, terms, conditions, or obligations other than those contained in this contract. This contract supersedes all communications, representations, or agreements, either verbal or written, between the parties hereto, with the exception of express warranties given to induce the County to enter into the contract.

12. ETHICS REQUIREMENTS/POLITICAL CONTRIBUTIONS

The contractor must comply with the ethics provisions contained in Chapters 11B and 19A, Montgomery County Code, which include the following:

- (a) a prohibition against making or offering to make certain gifts. Section 11B-51(a).
- (b) a prohibition against kickbacks. Section 11B-51(b).
- (c) a prohibition against a person engaged in a procurement from employing or offering to employ a public employee. Section 11B-52 (a).
- (d) a prohibition against a contractor that is providing a recommendation to the County from assisting another party or seeking to obtain an economic benefit beyond payment under the contract. Section 11B-52 (b)
- (e) a restriction on the use of confidential information obtained in performing a contract. Section 11B-52 (c).
- (f) a prohibition against contingent fees. Section 11B-53.

Furthermore, the contractor specifically agrees to comply with Sections 11B-51, 11B-52, 11B-53, 19A-12, and/or 19A-13 of the Montgomery County Code.

In addition, the contractor must comply with the political contribution reporting requirements currently codified under Title 14 of the Election Law, Annotated Code of Maryland.

13. GUARANTEE

- A. Contractor guarantees for one year from acceptance, or for a longer period that is otherwise expressly stated in the County's written solicitation, all goods, services, and construction offered, including those used in the course of providing the goods, services, and/or construction. This includes a guarantee that all products offered (or used in the installation of those products) carry a guarantee against any and all defects for a minimum period of one year from acceptance, or for a longer period stated in the County's written solicitation. The contractor must correct any and all defects in material and/or workmanship that may appear during the guarantee period, or any defects that occur within one (1) year of acceptance even if discovered more than one (1) year after acceptance, by repairing, (or replacing with new items or new materials, if necessary) any such defect at no cost to the County and to the County's satisfaction.
- B. Should a manufacturer's or service provider's warranty or guarantee exceed the requirements stated above, that guarantee or warranty will be the primary one used in the case of defect. Copies of manufacturer's or service provider's warranties must be provided upon request.
- C. All warranties and guarantees must be in effect from the date of acceptance by the County of the goods, services, or construction.
- D. The contractor guarantees that all work shall be accomplished in a workmanlike manner, and the contractor must observe and comply with all Federal, State, County and local laws, ordinances and regulations in providing the goods, and performing the services or construction.

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- E. Goods and materials provided under this contract must be of first quality, latest model and of current manufacture, and must not be of such age or so deteriorated as to impair their usefulness or safety. Items that are used, rebuilt, or demonstrator models are unacceptable, unless specifically requested by the County in the Specifications.

14. HAZARDOUS AND TOXIC SUBSTANCES

Manufacturers and distributors are required by federal "Hazard Communication" provisions (29 CFR 1910.1200), and the Maryland "Access to Information About Hazardous and Toxic Substances" Law, to label each hazardous material or chemical container, and to provide Material Safety Data Sheets to the purchaser. The contractor must comply with these laws and must provide the County with copies of all relevant documents, including Material Safety Data Sheets, prior to performance of work or contemporaneous with delivery of goods.

15. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) COMPLIANCE

In addition to the provisions stated above in Section 3, "Applicable Laws," contractor must comply with all requirements in the federal Health Insurance Portability and Accountability Act (HIPAA), to the extent that HIPAA is applicable to this contract. Furthermore, contractor must enter into the County's standard Business Associate Agreement or Qualified Service Organization Agreement when contractor or the County, as part of this contract, may use or disclose to one another, to the individual whose health information is at issue, or to a third-party, any protected health information that is obtained from, provided to, made available to, or created by, or for, the contractor or the County.

16. IMMIGRATION REFORM AND CONTROL ACT

The contractor warrants that both the contractor and its subcontractors do not, and shall not, hire, recruit or refer for a fee, for employment under this contract or any subcontract, an alien while knowing the alien is an unauthorized alien, or any individual without complying with the requirements of the federal Immigration and Nationality laws, including any verification and record keeping requirements. The contractor further assures the County that, in accordance with those laws, it does not, and will not, discriminate against an individual with respect to hiring, recruitment, or referral for a fee, of an individual for employment or the discharge of an individual from employment, because of the individual's national origin or, in the case of a citizen or prospective citizen, because of the individual's citizenship status.

17. INCONSISTENT PROVISIONS

Notwithstanding any provisions to the contrary in any contract terms or conditions supplied by the contractor, this General Conditions of Contract document supersedes the contractor's terms and conditions, in the event of any inconsistency.

18. INDEMNIFICATION

The contractor is responsible for any loss, personal injury, death and any other damage (including incidental and consequential) that may be done or suffered by reason of the contractor's negligence or failure to perform any contractual obligations. The contractor must indemnify and save the County harmless from any loss, cost, damage and other expenses, including attorney's fees and litigation expenses, suffered or incurred due to the contractor's negligence or failure to perform any of its contractual obligations. If requested by the County, the contractor must defend the County in any action or suit brought against the County arising out of the contractor's negligence, errors, acts or omissions under this contract. The negligence of any agent, subcontractor or employee of the contractor is deemed to be the negligence of the contractor. For the purposes of this paragraph, County includes its boards, agencies, agents, officials and employees.

19. INDEPENDENT CONTRACTOR

The contractor is an independent contractor. The contractor and the contractor's employees or agents are not agents of the County.

20. INSPECTIONS

The County has the right to monitor, inspect and evaluate or test all supplies, goods, services, or construction called for by the contract at all reasonable places (including the contractor's place of business) and times (including the period of preparation or manufacture).

21. INSURANCE

Prior to contract execution by the County, the proposed awardee/contractor must obtain at its own cost and expense the insurance specified in the applicable table (See Tables A and B) or attachment to these General Conditions, with one or more insurance company(s) licensed or qualified to do business in the State of Maryland and acceptable to the County's Division of Risk Management. Contractor must keep this insurance in full force and effect during the term of this contract, including all extensions. Unless expressly provided otherwise, Table A is applicable to this contract. The insurance must be evidenced by one or more Certificate(s) of Insurance and, if requested by the County, the proposed awardee/contractor must provide a copy of any and all insurance policies to the County. At a minimum, the proposed awardee/contractor must submit to the Director, Department of General Services, one or more Certificate(s) of Insurance prior to award of this contract, and prior to any contract modification extending the term of the contract, as evidence of compliance with this provision. The contractor's insurance must be primary. Montgomery County, MD, including its officials, employees, agents, boards, and agencies, must be named as an additional insured on all liability policies. Thirty days written notice to the County of cancellation or material change in any of the policies is required, unless a longer period is required by applicable law. In no event may the insurance coverage be less than that shown on the applicable table, attachment, or contract provision for required insurance. The Director, Department of General Services, may waive the requirements of this section, in whole or in part.

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TABLE A. - INSURANCE REQUIREMENTS
 (See Paragraph #21 Under the General Conditions of Contract
 Between County and Contractor)

CONTRACT DOLLAR VALUES (IN \$1,000's)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Workers Compensation (for contractors with employees)				
Bodily Injury by Accident (each)	100	100	100	See Attachment
Disease (policy limits)	500	500	500	
Disease (each employee)	100	100	100	
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, and independent contractors	300	500	1,000	See Attachment
Minimum Automobile Liability (including owned, hired and non- owned automobiles)				
Bodily Injury each person	100	250	500	See
each occurrence	300	500	1,000	Attachment
Property Damage each occurrence	300	300	300	
Professional Liability* for errors, omissions and negligent acts, per claim and aggregate, with one year discovery period and maximum deductible of \$25,000	250	500	1,000	See Attachment

Certificate Holder
 Montgomery County Maryland (Contract #)
 Office of Procurement
 Rockville Center
 255 Rockville Pike, Suite 180
 Rockville, Maryland 20850-4166

*Professional services contracts only

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TABLE B. - INSURANCE REQUIREMENTS
(See Paragraph #21 Under the General Conditions of Contract
Between County and Contractor)

	<u>Up to 50</u>	<u>Up to 100</u>	<u>Up to 1,000</u>	<u>Over 1,000</u>
Commercial General Liability minimum combined single limit for bodily injury and property damage per occurrence, including contractual liability, premises and operations, independent contractors, and product liability	300	500	1,000	See Attachment

Certificate Holder

Montgomery County Maryland (Contract #)
Office of Procurement
Rockville Center
255 Rockville Pike, Suite 180
Rockville, Maryland 20850-4166

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22. INTELLECTUAL PROPERTY APPROVAL AND INDEMNIFICATION - INFRINGEMENT

If contractor will be preparing, displaying, publicly performing, reproducing, or otherwise using, in any manner or form, any information, document, or material that is subject to a copyright, trademark, patent, or other property or privacy right, then contractor must: obtain all necessary licenses, authorizations, and approvals related to its use; include the County in any approval, authorization, or license related to its use; and indemnify and hold harmless the County related to contractor's alleged infringing or otherwise improper or unauthorized use. Accordingly, the contractor must protect, indemnify, and hold harmless the County from and against all liabilities, actions, damages, claims, demands, judgments, losses, costs, expenses, suits, or actions, and attorneys' fees and the costs of the defense of the County, in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, unauthorized use, or conversion of any patent, copyright, trademark or trade name, license, proprietary right, or other related property or privacy interest in connection with, or as a result of, this contract or the performance by the contractor of any of its activities or obligations under this contract.

23. NON-CONVICTION OF BRIBERY

The contractor hereby declares and affirms that, to its best knowledge, none of its officers, directors, or partners or employees directly involved in obtaining contracts has been convicted of bribery, attempted bribery, or conspiracy to bribe under any federal, state, or local law.

24. NON-DISCRIMINATION IN EMPLOYMENT

The contractor agrees to comply with the non-discrimination in employment policies and/ or provisions prohibiting unlawful employment practices in County contracts as required by Section 11B-33 and Section 27-19 of the Montgomery County Code, as well as all other applicable state and federal laws and regulations regarding employment discrimination.

The contractor assures the County that, in accordance with applicable law, it does not, and agrees that it will not, discriminate in any manner on the basis of race, color, religious creed, ancestry, national origin, age, sex, marital status, disability, or sexual orientation.

The contractor must bind its subcontractors to the provisions of this section.

25. PAYMENTS

No payment by the County may be made, or is due, under this contract, unless funds for the payment have been appropriated and encumbered by the County. Under no circumstances will the County pay the contractor for legal fees. The contractor must not proceed to perform any work (provide goods, services, or construction) prior to receiving written confirmation that the County has appropriated and encumbered funds for that work. If the contractor fails to obtain this verification from the Office of Procurement prior to performing work, the County has no obligation to pay the contractor for the work.

If this contract provides for an additional contract term for contractor performance beyond its initial term, continuation of contractor's performance under this contract beyond the initial term is contingent upon, and subject to, the appropriation of funds and encumbrance of those appropriated funds for payments under this contract. If funds are not appropriated and encumbered to support continued contractor performance in a subsequent fiscal period, contractor's performance must end without further notice from, or cost to, the County. The contractor acknowledges that the County Executive has no obligation to recommend, and the County Council has no obligation to appropriate, funds for this contract in subsequent fiscal years. Furthermore, the County has no obligation to encumber funds to this contract in subsequent fiscal years, even if appropriated funds may be available. Accordingly, for each subsequent contract term, the contractor must not undertake any performance under this contract until the contractor receives a purchase order or contract amendment from the County that authorizes the contractor to perform work for the next contract term.

26. PERSONAL PROPERTY

All furniture, office equipment, equipment, vehicles, and other similar types of personal property specified in the contract, and purchased with funds provided under the contract, become the property of the County upon the end of the contract term, or upon termination or expiration of this contract, unless expressly stated otherwise.

27. TERMINATION FOR DEFAULT

The Director, Department of General Services, may terminate the contract in whole or in part, and from time to time, whenever the Director, Department of General Services, determines that the contractor is:

- (a) defaulting in performance or is not complying with any provision of this contract;
- (b) failing to make satisfactory progress in the prosecution of the contract; or
- (c) endangering the performance of this contract.

The Director, Department of General Services, will provide the contractor with a written notice to cure the default. The termination for default is effective on the date specified in the County's written notice. However, if the County determines that default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the County may terminate the contract immediately upon issuing oral or written notice to the contractor without any prior notice or opportunity to cure. In addition to any other remedies provided by law or the contract, the contractor must compensate the County for additional costs that foreseeably would be incurred by the County, whether the costs are actually incurred or not, to obtain substitute performance. A termination for default is a termination for convenience if the termination for default is later found to be without justification.

28. TERMINATION FOR CONVENIENCE

This contract may be terminated by the County, in whole or in part, upon written notice to the contractor, when the County determines this to be in its best interest. The termination for convenience is effective on the date specified in the County's written notice. Termination for convenience may entitle the contractor to payment for reasonable costs allocable to the contract for work or costs incurred by the contractor up to the date of termination. The contractor must not be paid compensation as a result of a termination for convenience that exceeds the amount encumbered to pay for work to be performed under the contract.

29. TIME

Time is of the essence.

30. WORK UNDER THE CONTRACT

Work may not commence under this contract until all conditions for commencement are met, including execution of the contract by both parties, compliance with insurance requirements, encumbrance of funds, and issuance of any required notice to proceed.

31. WORKPLACE SAFETY

The contractor must ensure adequate health and safety training and/or certification, and must comply with applicable federal, state and local Occupational Safety and Health laws and regulations.

THIS FORM MUST NOT BE MODIFIED WITHOUT THE PRIOR APPROVAL OF THE OFFICE OF THE COUNTY ATTORNEY.

PMMD-45. REVISED 04/01/10

SECTION C - SCOPE OF SERVICES:

Background/General Description

Montgomery County, Maryland (County), opened the Silver Spring Civic Building (the “Civic Building”) and an adjacent public plaza known as the Veterans Plaza at Town Square (“Veterans Plaza”) in downtown Silver Spring in July 2010. The Civic Building and Veterans Plaza, One Veterans Place, Silver Spring, MD 20910, is located within the Silver Spring central business district approximately 1/3 of a mile from the Silver Spring Metro Station. A number of County departments and County programs are located in the Civic Building. The Civic Building and Veterans Plaza were designed to have a significant community presence and to be rented to the public for private events to help defray the costs of maintaining and operating these facilities. The County’s Office of Community Use of Public Facilities (CUPF) has responsibility for the operations of the Civic Building and Veterans Plaza facility, scheduling community use of the Civic Building and Veterans Plaza according to fees, policies and procedures established by the Interagency Coordinating Board.

Veterans Plaza and the Civic Building substantially complete a redevelopment project consisting of public and private improvements in Downtown Silver Spring. In addition to the Veterans Plaza and the Civic Building, the redevelopment surrounding those facilities includes approximately: 500,000 sq. feet of retail space, 240,000 sq. feet of Class ‘A’ office space, a 100+ room hotel, and approximately 200 units (to-be-built) residential development complex. There are approximately 3,600 parking spaces in two structured garages across the street from Veterans Plaza. Veterans Plaza is also the site of select County events including the annual Thanksgiving Parade, Jazz Festival and a number of ethnic festivals and programs. The Civic Building and Veterans Plaza are located at the intersection of Ellsworth Drive and Fenton Street. The above-described retail space is located on the other side of the Fenton/Ellsworth intersection in a project known as “Downtown Silver Spring”, which includes a private plaza with a splash play area, café seating for restaurants, and a portion of Ellsworth that is closed for different planned programming including music, a seasonal weekly farmer’s market and other activities.

Part of Veterans Plaza was constructed beneath a pavilion for use during the colder months as an ice rink (the ice rink operates from October to March). During non-seasonal use, the ice rink is decommissioned and is available for assemblies, civic activities and community events scheduled through the CUPF. During seasonal use, a map of the area outside of the ice rink as shown on Attachment I “Map” is available for public and/or private programming as well as for private use by the community, all of which is scheduled by the CUPF in accordance with established procedures. Currently, a local weekend market consisting of a variety of vendors offering arts and crafts has been taking place at Veterans Plaza on Saturdays (May – December). The Veterans Plaza’s dimensions are 190 feet x 80 feet. The covered ice rink pavilion area is 104 feet x 56 feet.

The environment around Veterans Plaza is that of activity and vitality - a flow of people going to or coming from shopping, work, home, entertainment, or recreation. Ellsworth Drive in Silver Spring is pedestrian friendly and active with people drawn in by high quality retail, entertainment, and other uses that serve the local community. Programmed uses, events, and entertainment on Veterans Plaza is intended to attract a diverse population into downtown Silver Spring to build community, enjoy the many arts activities with the Silver Spring Arts and Entertainment District, and to support local businesses.

Intent

The County desires to have a weekend public market to offer a place for community artisans and vendors to display their wares and locally produced crafts reflective of the diverse population of Silver Spring and Montgomery County and to serve as an exciting social gathering place for all ages and cultures to view and purchase arts and crafts from local artisans and to enjoy related community and cultural activities.

Scope of Work/Work Statement

The County and community at large desire to have a diverse market with related activities, without duplicating existing activities that are programmed on the private portion of Ellsworth Drive or at the Downtown Silver Spring Retail project.

The contractor will be required to provide a family-friendly open air market that makes optimal use of Veterans Plaza, that includes: public arts and crafts or similar market with activities of interest to the community; promotes locally produced or crafted, recycled, fair trade, eco, organic and environmentally friendly goods and services; offers a mix of vendor stalls/booths which enhance but to not detract from the viability of the neighboring businesses in the immediate vicinity; allocates a percentage of their weekly operating space (at least two) at no charge to registered charities and/or local community groups and organizations for the purpose of promoting diversity and community engagement, education and marketing.

Food sales must not be part of the market operations.

The Contractor must provide for temporary placement of portable toilets for customer and vendor use.

Times of Operation: The market may operate **no earlier than April 1 and no later than October 31 between the hours of 9 am to 3 pm** (operation hours) on either **Saturdays or Sundays**. Up to 2 hours may be reserved for set-up before the operation hour and 2 hours for clean-up after operations have concluded. When necessary, the County may require the relocation of the market operations to Ellsworth Drive between Fenton Street and the Town Square Garage, or to such other location as is reasonably agreed upon by the parties. All street closure and other requirements and permits will be the responsibility of the contractor. The successful offeror will be provided not less than thirty (30) days notice of any such relocation.

The Contractor must manage amplification of sound or music and the impact of noise level, and ensure that the market operation conforms to County regulations, including, but not limited to those governing noise control and signage. The Contractor must also adhere to the terms and conditions of the Montgomery County Community Use of Public Facilities License Agreement (FULA, Attachment J) as an additional component of the Contract with the County.

The Proposal must describe how the Offeror will accomplish the following (see also Section F, Submissions):

1. Offer the County's diverse artisans the opportunity to display and market their wares and products to the community;
2. Offer the diverse Silver Spring community and the surrounding community the opportunity to view and purchase local and culturally diverse products;
3. Provide a festive community event which highlights the rich diversity of Silver Spring and Montgomery County and which creates a family-friendly environment attractive to a diverse community;
4. Create a social gathering place on Veteran's Plaza during hours of operation of the market;
5. Benefit local businesses participating in the market as well as businesses surrounding the market;
6. Offer market related arts and entertainment activities in conjunction with the market;
7. Help create an ambiance in downtown Silver Spring that is family friendly and welcoming of all;
8. Contribute to the economic vitality of downtown Silver Spring and enhance the local tax base, offering low risk opportunities to small businesses, vendors, and entrepreneurs; and increasing the number of visitors to the downtown area;
9. Enhance the safety and security of the downtown area by creating a friendly environment for all people from different ethnic, cultural, and socioeconomic communities;
10. Innovatively maximize the use of this public space;

11. Incorporate attractive, energetic, quality activities and events to the operations of a public market; and
12. Promotes locally produced or crafted, recycled, fair trade, eco, organic and environmentally friendly goods and services;
13. Complement and collaborate with, when appropriate, other activities and programs in the Civic Building and the Silver Spring area;
14. Incorporate attractive, energetic, quality activities and events to the operations of a public market; and
15. Complement and collaborate with, when appropriate, other activities and programs in the Civic Building and the Silver Spring area.

Additional consideration will be given for the inclusion of related arts and entertainment activities that will be scheduled in conjunction with the market.

Proposals should also describe how offeror/contractor will achieve and maintain the following core values during the following core values and describe how each will be achieved and maintained during the term of the contract resulting from this RFP: (a) transparency in operations; (b) openness and fairness in the selection process for the vendors to participate in the market in accordance with published selection standards; (c) accountability of craft market management to the County, (d) emphasis on products that are locally created and/or that reflect the wide-spread cultural interests of the diverse Silver Spring and Montgomery County community; and (e) sustainable environmental, and green practices in the operation, management and conduct of the market.

The offeror's proposal must indicate in detail the anticipated length of market operations, the number of months and hours of operation, programming, staffing (including marketing, product selection, set-up, break-down, security and clean-up), services provided to vendors to facilitate merchandise sales, activities, anticipated use charges, events, promotions, marketing, and other factors that will result in a market that will draw vendors and people of all ages and backgrounds from the community, County, and state. An estimate of the total number of vendors and people that will be drawn to the market and events is essential to the County in considering the offeror's proposal.

The County will make available to the contractor plaza space for the public market operation at no charge. However, the contractor must compensate the County for use of the facility that is sufficient to cover the County's direct and indirect costs for its use. At minimum, the contractor must compensate the County costs listed below. The direct and indirect rates may be subject to annual changes at the discretion of the County:

- Building Services Worker, \$ 25 per hour
- Security Officer Services, \$35 per hour

However, Offeror can propose/offer a higher and/or additional compensation rate to the County than stated above as well as other payments to be made to the County.

The successful offeror will be subject to the terms and conditions of the Montgomery County Community Use of Public Facilities License Agreement (FULA, Attachment J) as an additional component of the Contract with the County.

The County may schedule activities on Veterans Plaza without charge from the Contractor. The Contractor is not permitted to charge the County for any external activity scheduled by the County on the Plaza

In addition to the requirements of provision 4 of Section B, General Conditions of Contract Between County and Contractor, the resultant contractor must not be subcontract or have responsibilities reassigned without the express written permission of the County

Other than the market activities specifically permitted in the resultant contract, the Contractor must not permit any person to use Veterans Plaza for any other activities during market hours, nor is the Contractor permitted to use, for any purpose, the Veterans Plaza during hours not authorized under the Contract.

Contractor Responsibility

The selected **Contractor must:**

- 1) Operate the market within the date and time parameters established by the County
- 2) Organize a wide array of vendors reflecting the diversity of Silver Spring and Montgomery County, as well as a diversity of products;
- 3) Determine the market layout and schedule of events.
- 4) Adhere to the provisions of the CUPF FULA (Attachment J)
- 5) Be responsible and liable for all organization, management, operation, maintenance, marketing and financial control for the market.
- 6) Provide an annual business plan for review by the County for the operation of the market demonstrating the viability of the operation based on rates, types of vendors and goods to be sold, expected patronage, expenses, and special events.
- 7) Establish a schedule of activities, events, and community uses that will make maximum use of available operating hours and opportunities for joint programming with the retail area to draw visitors to the area and customers to market no later than 60 days prior to start date of market operations.
- 8) Coordinate all market related activities with the County. The County reserves the right to negotiate the number of free market related community/special events/activities prior to contract award.
- 9) Adhere to payment terms as negotiated.
- 10) Furnish and maintain all necessary equipment and supplies for a basic market operation at no cost to the County.
- 11) Ensure that the market manager and security maintain an on site presence during all market hours, and meet regularly, if not weekly, with the County's representative.
- 12) Keep a daily record of the number of vendors, rentals (including fees collected), and events/activities.
- 13) Keep a record and notify County immediately of incidents occurring during market hours.
- 14) Keep adequate books and records of accounts and permit the County to inspect such books and records at any reasonable time during normal business hours.
- 15) Procure, at own cost and expense, and post in a conspicuous place in the market area all permits and licenses necessary for the operation of the market on Veterans Plaza.
- 16) Maintain orderly control of staff, vendors, volunteers, and attendees.
- 17) Plan outlining the qualifications and training of staff and volunteers. CPR trained volunteers/staff and handbook are desirable.
- 18) Allow the County to provide, maintain, and control any seasonal or special event decorations on the site, and shall obtain prior County written approval for any decorations or signage. Contractor must ensure that any signage conforms to the signage style and standards for the Veterans Plaza, and include the County logo.
- 19) Present advertising materials to the County for pre-approval before distribution. The Contractor is responsible for costs associated with publicizing its own programs, activities related to the market, and special events by the Contractor. Contractor shall coordinate advertising campaigns/programs with the County.
- 20) Ensure that Veterans Plaza is ready for use by other groups by leaving the Veterans Plaza clean and free of litter, debris, or damage. This includes but not limited to Civic building loading dock. As

needed, the Contractor must arrange for regular pick up of litter and trash. Contractor may not store materials or equipment on site before or after the end of their scheduled use.

- 21) Repair any areas that are damaged by the use of Contractor-controlled equipment, vendor, partner, or sponsored organization/program.
- 22) Provide and plan to place at least one portable toilet facility during the hours the market is in operation for customer and vendor use.
- 23) Ensure that market operation conforms with County regulations to include noise control and signage
- 24) Allocates a percentage of their weekly operating space (at least two) at no charge to registered charities and/or local community groups and organizations for the purpose of promoting diversity and community engagement, education and marketing.
- 25) Manage amplification of sound or music and the impact of noise level.
- 26) Manage the set up and break down and any use of the civic building loading dock by vendors and traffic flow.
- 27) Provide a plan outlining the qualifications and training of staff and volunteers. CPR trained volunteers/staff and handbook are desirable
- 28) Provide an operation plan that supports a consistent level of programming and activities throughout the duration of the hours of operation. A market with activities that complement, build upon and support other activities in the Civic Building or surrounding community. A professional, well managed and self sufficient operation which includes provisions to cover safety and comfort of vendors and customers

County Responsibility

- 1) The County will provide capital maintenance of the entire Veterans Plaza consisting of structural, electrical, plumbing, and mechanical repair and servicing.
- 2) The County will allow access to electrical outlets and benches.
- 3) The County will make the Veterans Plaza ready and available for operation of the market no earlier than April 1 and no later than October 31 (the ice skating operation may begin operation under the pavilion in/by the third week of March).
- 4) The County will provide bins for trash collection
- 5) Scheduling of County staff support to include: at least one Security Officer and one Building Services Worker for all hours the market is scheduled to operate.
- 6) The County shall have the authority to order the removal from the premises any of Contractor's employees or volunteers who are threatening or disorderly in conduct and any such employee shall not again be employed by the Contractor to operate the market under the contract awarded pursuant to this RFP.
- 7) The County must maintain and control any seasonal or special event decorations on the site, and any decorations or signage is subject to the County approval.
- 8) Provide permission to locate the portable toilet facility on County property or another suitable site

SECTION D - PERFORMANCE PERIOD

1. TERM

The effective date of this Contract begins upon signature by the Director, Department of General Services. The period in which Contractor must perform all work under the Contract begins upon the County's issuance of a Notice to Proceed and ends after a one year period. Contractor must also perform all work in accordance with time periods stated in the Scope of Work. Before this term for performance ends, the Director at his/her sole option may (but is not required to) renew the term. Contractor's satisfactory performance does not guarantee a renewal of the term. The Director may exercise this option to renew this term two times for one year each.

SECTION E - METHOD OF AWARD/EVALUATION CRITERIA

1. PROCEDURES

- a. Upon receipt of proposals, the Qualification and Selection Committee (QSC) will review and evaluate all proposals in accordance with the evaluation criteria listed below under Section E.2.a. The QSC will also review an offeror for responsibility.
- b. Vendor interviews may be conducted with the three highest scoring offerors based on the QSC's score for each written proposal. The interview criteria that will then be utilized is listed below under Section E.2.b. The QSC will also review an offeror for responsibility.
- c. The QSC will make its award recommendation of the highest ranked offeror based on the QSC's combined written and interview score, and its responsibility determination;
- d. The Using Department Head will review and forward the QSC recommendation with concurrence, objection, or amendment to the Director, Department of General Services.
- e. The Director, Department of General Services, may approve, approve with conditions, or reject the Using Department Head's recommendation.
- f. Upon approval of a recommended award to a proposed awardee, by the Director, Department of General Services, the County will enter into negotiations with the proposed awardee. If a contract cannot be successfully negotiated with the proposed awardee, the Using Department will proceed to negotiations with the next highest ranked offeror after obtaining approval from the Director. If the Director approves, negotiations may be held simultaneously or successively with one or more offerors prior to making an award.
- g. After the successful conclusion of negotiations, the Director will publicly post the name of the proposed awardee.
- h. The County reserves the right to cancel the solicitation. The solicitation cancellation will be publicly posted.

2. EVALUATION CRITERIA

POINTS

a. Written Proposal Evaluation Criteria

The QSC will evaluate the written proposals based on the following criteria.

1. Experience in operating a public arts and crafts market or similar operation, provide examples of any past events. 20
2. Describe firms approach to how the Plan of Operation meets the County's objectives (project task, project schedules, estimation of revenues and expenditures, vendor recruitment methodology, marketing, events, programming, staffing, hours of operations, etc.) 20
3. Ability to clearly describe how to attract and include local vendors and locally produced goods with a transparent, open and fair selection process for vendors 15
4. Describe a long term commitment to the success of the market and/or having a plan that will sustain the market for future long term success in contributing to the economic vitality of downtown Silver Spring and enhance the local tax base, offering low risk opportunities to small businesses, vendors, and entrepreneurs; and increasing the number of visitors to the downtown area. 15

5. Describe a plan on how to provide a festive community event which highlights the rich diversity of Silver Spring and Montgomery County and which creates a family-friendly environment attractive to a diverse community	10
6. Price (value) of compensation package to County	20
Highest possible QSC score for written proposal evaluation:	100

b. Interview Evaluation Criteria

The QSC will evaluate the interviews based on the following criteria.

1. Demonstrate firm's experience in operating, marketing and events programming for a public arts and crafts market, or similar operation.	30
2. Demonstrate firm's Viability of Business Plan (cost of operations and revenue estimates)	25
3. Demonstrate firm's experience of on-site Manager in organizing, operating, managing and marketing a public market/similar operation with related activities.	30
4. Demonstrate a plan of action for outreach to the local community(s).	15
Highest possible QSC score for interview evaluation:	100

SECTION F - SUBMISSIONS**1. PROPOSAL SUBMISSIONS**

FAILURE OF AN OFFEROR TO SUBMIT ALL REQUIRED PROPOSAL SUBMISSIONS MAY RENDER YOUR PROPOSAL UNACCEPTABLE AS DETERMINED BY THE DIRECTOR, DEPARTMENT OF GENERAL SERVICES.

Offerors must submit one original and four (4) copies of their proposal in the format below. Written proposals will be evaluated on only what is submitted. The offeror must submit sufficient information to enable the QSC to evaluate the offeror's capabilities and experience. Proposals must include the following information (including labeled sections numbered as shown):

- a. A cover letter with a brief description of the firm, including the offeror's name, address, telephone number and fax number.
- b. The Acknowledgment (page 4) of this solicitation must be submitted and signed by a person authorized to bind the offeror to the proposal.
- c. At least three references that may be contacted to attest to the quality and timeliness of the offeror's work of similar nature and scope to the scope required by the County. (see Attachment A)
- d. If this solicitation is subject to the Wage Requirements Law (see page 1), then the offeror must submit the appropriate Wage Requirements forms in Attachment G. Failure to submit and complete the required material information on the form(s) will make your proposal unacceptable under County law and will be rejected.
- e. Metropolitan Washington Council of Governments Rider Clause - Attachment B
- f. Minority, Female, Disabled Persons Subcontractor Performance Plan (Attachment D). **To ensure a contract can move forward as a result of this solicitation, this plan needs to be submitted with your proposal.**
- g. Minority Business Program and Offeror's Representation - Attachment C
- h. Legal form of organization or firm (e.g. partnership, corporation, non-profit status, etc). If joint venture, identify the members of the joint venture and provide all information required within this section for each member.

- i. Name, title, address, email and telephone number of person to serve as project manager and proposal contact (if different).
- j. The proposal shall be limited to 10 pages, double-sided (8-1/2 x 11 inches), 1 Page Executive summary (Highlights of Proposal), exclusive of resumes, graphics, forms, photographs, cover letter, etc. Type size and margins for text should be in keeping with accepted standard formats for desktop publishing and processing. Electronic media will not be accepted and will be discarded.
- k. The proposal must include the offeror's approach to the project, business plan, an explanation of project tasks, a project schedule, estimation of revenues, expenditures, recruitment methodology and documentation of the offeror's qualifications related to the scope of work as described
- l. Describe any past events management experience including, but not limited to, vendor recruitment, booth arrangement traffic flow, parking, market event set-up and take-down, and any other related information.
- m. Provide narrative describing a long term commitment to the success of the market and/or developing a plan with will sustain the market for future long term success in contributing to the economic vitality of downtown Silver Spring and enhance the local tax base, offering low risk opportunities to small businesses, vendors, and entrepreneurs; and increasing the number of visitors to the downtown area.
- n. Describe experience of on-site Manager in organizing, operating, managing and marketing a public market/similar operation with related activities.
- o. Proposed rates to pay the County for Building Services Worker and Security Officer Services, and any other proposed payments to the County.
- p. Proposed rates to be charged vendors, include any discounts for non-profit vendors.

2. AWARD SUBMISSIONS

Prior to the execution of the contract, the following items must be submitted:

- a. Minority, Female, Disabled Person Subcontractor Performance Plan (contract value greater than \$50,000) – Attachment D
- b. Offeror's Certification of Cost and Price (contract value greater than \$100,000) – Attachment E
- c. Certificate of Insurance (see mandatory insurance requirements) - Attachment F
Awardee must provide the applicable insurance coverage and all costs for this coverage must be calculated into your proposal price. These insurance requirements supersede those found in the Provision #21 of the General Conditions between County and Contractor and are applicable to any contract executed as a result of this solicitation.
- d. If this solicitation is subject to the Wage Requirements Law (see page 1), then the offeror must submit a Certification of posting a Wage Requirements notice.
- e. Offeror's proof of Local Small Business Reserve Program (LSBRP) qualification/certification

SECTION G - COMPENSATION

The County will be paid on a monthly basis within 30 days of submission of an invoice.

SECTION H - CONTRACT ADMINISTRATOR

1. AUTHORITY

The Director, Department of General Services, is the delegated contracting officer. Therefore, the Director, Department of General Services, must approve amendments, modifications, or changes to the terms, conditions, or minority, female, and disabled subcontractor plans in writing.

2. USING DEPARTMENT

The contract administrator for any contract(s) resulting from this solicitation will be Jewru Bandeh at 240-777-5308, Jewru.bandeh@montgomerycountymd.gov.

The contract administrator's duties include, but are not limited to the following:

1. Serve as liaison between the County and Contractor;
2. Give direction to the Contractor to ensure satisfactory and complete performance;
3. Monitor and inspect the Contractor's performance to ensure acceptable timeliness and quality;
4. Serve as Records Custodian for this contract, including Wage Requirements;
5. Accept or reject the contractor's performance;
6. Furnish timely written notice of the contractor's performance failures to the Director, Department of General Services and to the County Attorney, as appropriate;
7. Prepare required reports;
8. Approve or reject invoices for payment;
9. Recommend contract modifications or terminations to the Director, Department of General Services;
10. Issue notices to proceed; and
11. Monitor and verify compliance with any MFD Performance Plan.

SECTION I - SPECIAL TERMS AND CONDITIONS

The successful offeror will be required enter into a Montgomery County Community Use of Public Facilities License Agreement (FULA), See Attachment J.

SECTION J - ETHICS

As a result of being awarded this contract the successful contractor may be ineligible for the award of related contracts. Montgomery County Code Sections 11B-52 (b) and (c) state:

A contractor providing an analysis or recommendation to the County concerning a particular matter must not, without first obtaining the written consent of the Chief Administrative Officer:

- (1) Assist
 - (a) another party in the matter; or
 - (b) another person if the person has a direct and substantial interest in the matter; or
- (2) Seek or obtain an economic benefit from the matter in addition to payment to the contractor by the County.

ATTACHMENT A**REFERENCES**

(must submit at least three)

You are requested to provide references to the County with your proposal. The three (3) references must be from individuals or firms currently being serviced or supplied under similar contracts, or for whom work of a similar scope has been performed within the last year. Names for references shall be of individuals who directly supervised or had direct knowledge of the services or goods provided. Failure of an offeror to provide the County with references within the time frame as stated herein may result in the offeror being considered non-responsible.

NAME OF
FIRM:

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

NAME OF
FIRM:

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

NAME OF
FIRM:

ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____

CONTACT PERSON: _____ PHONE: _____

ATTACHMENT B**METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS RIDER CLAUSE****USE OF CONTRACT(S) BY MEMBERS COMPRISING THE METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS PURCHASING OFFICERS' COMMITTEE.**

- A. If authorized by the offeror(s), resultant contract(s) will be extended to any or all of the listed members as designated by the offeror to purchase at contract prices in accordance with contract terms.
- B. Any member utilizing such contract(s) will place its own order(s) directly with the successful Contractor. There shall be no obligation on the part of any participating member to utilize the contract(s).
- C. A negative reply will not adversely affect consideration of your proposal.
- D. It is the awarded vendor's responsibility to notify the members shown below of the availability of the Contract(s).
- E. Each participating jurisdiction has the option of executing a separate contract with the awardee. Contracts entered into with a participating jurisdiction may contain general terms and conditions unique to that jurisdiction including, by way of illustration and not limitation, clauses covering minority participation, non-discrimination, indemnification, naming the jurisdiction as an additional insured under any required Comprehensive General Liability policies, and venue. If, when preparing such a contract, the general terms and conditions of a jurisdiction are unacceptable to the awardee, the awardee may withdraw its extension of the award to that jurisdiction.
- F. The issuing jurisdiction shall not be held liable for any costs or damages incurred by another jurisdiction as a result of any award extended to that jurisdiction by the awardee.

In pricing section of contract:OFFEROR'S AUTHORIZATION TO EXTEND CONTRACT:

<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>	<u>YES</u>	<u>NO</u>	<u>JURISDICTION</u>
_____	_____	Alexandria, Virginia	_____	_____	Manassas Park, Virginia
_____	_____	Alexandria Public Schools	_____	_____	Maryland-National Capital Park & Planning
_____	_____	Alexandria Sanitation Authority	_____	_____	Commission
_____	_____	Arlington County, Virginia	_____	_____	Metropolitan Washington Airports Authority
_____	_____	Arlington County Public Schools	_____	_____	Metropolitan Washington Council of
_____	_____	Bladensburg, Maryland	_____	_____	Governments
_____	_____	Bowie, Maryland	_____	_____	Montgomery College
_____	_____	Charles County Public Schools	_____	_____	Montgomery County, Maryland
_____	_____	College Park, Maryland	_____	_____	Montgomery County Public Schools
_____	_____	Culpeper County, Virginia	_____	_____	Northern Virginia Community College
_____	_____	District of Columbia	_____	_____	OmniRide
_____	_____	District of Columbia Courts	_____	_____	Potomac & Rappahannock Transportation
_____	_____	District of Columbia Public Schools	_____	_____	Commission
_____	_____	District of Columbia Water & Sewer	_____	_____	Prince George's County, Maryland
_____	_____	Authority	_____	_____	Prince George's County Public Schools
_____	_____	Fairfax, Virginia	_____	_____	Prince William County, Virginia
_____	_____	Fairfax County, Virginia	_____	_____	Prince William County Public Schools
_____	_____	Fairfax County Water Authority	_____	_____	Prince William County Service
_____	_____	Falls Church, Virginia	_____	_____	Authority
_____	_____	Fauquier County Schools & Government,	_____	_____	Rockville, Maryland
_____	_____	Virginia	_____	_____	Spotsylvania County Schools
_____	_____	Frederick, Maryland	_____	_____	Stafford County, Virginia
_____	_____	Frederick County, Maryland	_____	_____	Takoma Park, Maryland
_____	_____	Gaithersburg, Maryland	_____	_____	Upper Occoquan Sewage Authority
_____	_____	Greenbelt, Maryland	_____	_____	Vienna, Virginia
_____	_____	Herndon, Virginia	_____	_____	Virginia Railway Express
_____	_____	Leesburg, Virginia	_____	_____	Washington Metropolitan Area Transit
_____	_____	Loudoun County, Virginia	_____	_____	Authority
_____	_____	Loudoun County Public Schools	_____	_____	Washington Suburban Sanitary Commission
_____	_____	Loudoun County Sanitation Authority	_____	_____	Winchester, Virginia
_____	_____	Manassas, Virginia	_____	_____	Winchester Public Schools
_____	_____	City of Manassas Public Schools	_____	_____	

Vendor Name

RFP # 1012538
ATTACHMENT C

Minority Business Program & Offeror's Representation

It is the policy of the County to recruit actively, minority-owned businesses to provide goods and services to perform governmental functions pursuant to Section 11B-57 of the County Code. Minority-owned businesses are described in County law as Minority/Female/Disabled Person-owned businesses (MFD). MFD businesses include certain non-profit entities organized to promote the interests of persons with a disability demonstrating (on a contract by contract basis) that at least 51% of the persons used by the non-profit entity to perform the services or manufacture the goods contracted for by the County, are persons with a disability. MFD firms also include those firms that are 51% owned, controlled and managed by one or more members of a socially or economically disadvantaged minority group, which include African Americans who are not of Hispanic origin, Hispanic Americans, Native Americans, Asian Americans, Women and Mentally or Physically Disabled Persons.

Section 7 – “Minority Contracting” Montgomery County Procurement Regulations specifies the procedure to be followed and will govern the evaluation of offers received pursuant to this solicitation. A copy of Section 7 of the Procurement Regulations is available upon request.

Prior to awarding contracts with a value of \$50,000 or more, a prospective Contractor (who is not a certified MFD firm) must demonstrate that a minimum percentage of the overall contract value as set by the County, will be subcontracted to certified MFD businesses. A decision as to whether the prospective Contractor has demonstrated a good faith effort to meet this subcontracting requirement will be made by the Director, Department of General Services or his/her designee, who may waive this requirement.

A sample of the MFD Report of Payment Received is attached. This form is mailed to the MFD Subcontractor to complete for documentation of payment by the Prime contractor. It is not to be completed by the Prime contractor nor submitted with the MFD Subcontractor Performance Plan.

The Director, Department of General Services or his /her designee determines whether a waiver of MFD subcontracting would be appropriate, under Section 7.3.3.5 of the Procurement Regulations.

For further information regarding the MFD Business Program, please contact the MFD Program, Office of Business Relations and Compliance, at (240) 777-9912.

Offerors are encouraged (but not required) to complete the following:

I hereby represent that this is a Minority Business firm as indicated below (CIRCLE ONE):

AFRICAN AMERICAN	ASIAN AMERICAN	DISABLED PERSON
FEMALE	HISPANIC AMERICAN	NATIVE AMERICAN

Attach one of the following certification documents from: Maryland Department of Transportation (MDOT); Virginia Small, Women & Minority-Owned Business: Federal SBA 8(a); MD/DC Minority Supplier Development Council, Women's Business Enterprise National Council; or City of Baltimore.



**Montgomery County MFD Report of Payments Received For Office Use
Office of Business Relations and Compliance**

SAMPLE ONLY! NOT TO BE USED BY PRIME

MFD Subcontractor Company Name: _____

Prime Contractor Company Name: _____

Contract Number/Title: _____

Project Location: _____

MFD Subcontract Amount: \$ _____

PLEASE READ CAREFULLY BEFORE SIGNING

This certifies that for the month of _____, my company received \$ _____ for work performed, services rendered and/or materials supplied on the above contract.

TOTAL AMOUNT OF SUBMITTED INVOICES TO

DATE: \$ _____

TOTAL PAYMENTS RECEIVED TO DATE: \$ _____

Are you experiencing any contract problems with the prime contractor and/or the project? YES ☐ NO ☐

Comments: _____

I certify that the above information is true and accurate to the best of my record documentation and knowledge.

(TYPED/PRINTED COMPANY NAME)

(TYPED/PRINTED NAME OF COMPANY OFFICIAL)

(TITLE)

(SIGNATURE OF COMPANY OFFICIAL)

(DATE)

() - ()
TELEPHONE FAX E-MAIL

Mail to: Alvin Boss, Program
Specialist II
255 Rockville Pike, Ste. 180
Rockville, MD 20850

ATTACHMENT D

Minority-Owned Business Addendum to the General Conditions of Contract Between County and Contractor, and its companion document “Minority, Female, Disabled Person Subcontractor Performance Plan”.

- A. This contract is subject to the Montgomery County Code and the Montgomery County Procurement Regulations regarding participation in the Minority-Female-Disabled Person (MFD) procurement program.
- B. Contractor must subcontract a percentage of the total dollar value of the contract, including all modifications and renewals, to certified minority owned businesses. The MFD subcontracting goal may be waived under appropriate circumstances by submission of a letter to the Office of Business Relations and Compliance. The letter must explain why a waiver is appropriate. The Director, Department of General Services or designee may waive, in whole or in part, the MFD subcontracting goal if the Director determines that a waiver is appropriate under Section 7.3.3.5 of the Montgomery County Procurement Regulations. In determining if a waiver should be granted, the Director may require the Contractor to submit additional information; the Director may require the Contractor to submit some or all of this information on forms approved by the Director.
- C. The attached MFD Subcontractor Performance Plan, which must be approved by the Director, is an integral part of the contract between County and Contractor. In a multi-term contract, Contractor must submit a MFD Subcontract Performance Plan to be in effect for the life of the contract, including any renewal or modification.
- D. Contractor must include in each subcontract with a minority owned business a provision that requires the use of binding arbitration with a neutral arbitrator to resolve disputes between the Contractor and the minority owned business subcontractor. This arbitration provision must describe how the cost of dispute resolution will be apportioned; the apportionment must not, in the judgment of the Director, attempt to penalize a minority owned business subcontractor for filing an arbitration claim.
- E. County approval of the MFD Subcontractor Performance Plan does not create a contractual relationship between the County and the minority owned business subcontractor.
- F. Contractor must notify and obtain prior written approval from the Director regarding any change in the MFD Subcontractor Performance Plan.
- G. Before receiving final payment under this contract, Contractor must submit documentation showing compliance with the MFD Subcontracting Performance Plan. Documentation may include, at the direction of the Director, invoices, copies of subcontracts with minority owned businesses, cancelled checks, affidavits executed by minority owned business subcontractors, waivers, and arbitration decisions. The Director may require Contractor to submit periodic reports on a form approved by the Director. The Director may conduct an on-site inspection for the purpose of determining compliance with the MFD Subcontractor Performance Plan. If this is a multi-term contract, final payment means the final payment due for performance rendered for each term of the contract.
- H. If the Contractor fails to submit documentation demonstrating compliance with the MFD Subcontractor Performance Plan, to the satisfaction of the Director, after considering relevant waivers and arbitration decisions, the Contractor is in breach of this contract. In the event of a breach of contract under this addendum, the Contractor must pay to the County liquidated damages equal to the difference between all amounts the Contractor has agreed under its Plan to pay minority owned business subcontractors and all amounts actually paid minority owned business subcontractors with appropriate credit given for any relevant waiver or arbitration decision. Contractor and County acknowledge that damages which would result to the County as a result of a breach under this addendum are difficult to ascertain, and that the liquidated damages provided for in this addendum are fair and reasonable in estimating the damage to the County of a breach of this addendum by Contractor. In addition, the County may terminate the contract. As the result of a breach under this addendum, the Director, Department of General Services, must find the Contractor non-responsible for purposes of future procurement with the County for the ensuing three years.

MINORITY, FEMALE, DISABLED PERSON SUBCONTRACTOR
PERFORMANCE PLAN

Contractor's

Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTRACT NUMBER/PROJECT DESCRIPTION: _____

- A. Individual designated assigned by Contractor to monitor ensure Contractor's compliance with MFD Subcontractor Performance Plan:

Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

- B. This Plan covers the life of the contract from contract execution through the final contract expiration date.
- C. The percentage of total contract dollars, including modifications and renewals, to be paid to all certified minority owned business subcontractors, is _____% of the total dollars awarded to Contractor.
- D. Each of the following certified minority owned businesses will be paid the percentage of total contract dollars indicated below as a subcontractor under the contract.

I hereby certify that the business (es) listed below are certified by one of the following: Maryland Department of Transportation (MDOT); Virginia Small, Woman and Minority Owned Business (SWAM); Federal SBA (8A); MD/DC Minority Supplier Development Council (MSDC); Women's Business Enterprise National Council (WBENC); or City of Baltimore.

A Certification Letter must be attached.

For assistance, call 240-777-9912.

1. Certified by: _____

Subcontractor Name: _____

Title: _____

Address: _____

City: _____

State: _____

Zip: _____

Phone Number: _____

Fax Number: _____

Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services:

2. Certified by:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

CONTACT PERSON:

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

3. Certified by:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number:

Fax Number:

Email:

CONTACT PERSON:

Circle MFD Type:

AFRICAN AMERICAN

ASIAN AMERICAN

DISABLED PERSON

FEMALE

HISPANIC AMERICAN

NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor:

This subcontractor will provide the following goods and/or services:

4. Certified By:

Subcontractor Name:

Title:

Address:

City:

State:

Zip:

Phone Number: _____ Fax Number: _____ Email: _____

CONTACT PERSON: _____

Circle MFD Type:

AFRICAN AMERICAN
FEMALE

ASIAN AMERICAN
HISPANIC AMERICAN

DISABLED PERSON
NATIVE AMERICAN

The percentage of total contract dollars to be paid to this subcontractor: _____

This subcontractor will provide the following goods and/or services: _____

E. The following language will be inserted in each subcontract with a certified minority owned business listed in D above, regarding the use of binding arbitration with a neutral arbitrator to resolve disputes with the minority owned business subcontractor; the language must describe how the costs of dispute resolution will be apportioned:

F. Provide a statement below, or on a separate sheet that summarizes maximum good faith efforts achieved, and/or the intent to increase minority participation through out the life of the contract or the basis for a full waiver request:

G. A full waiver request must be justified and attached.

Full Waiver Approved:

Partial Waiver Approved:

MFD Program Officer Date: _____

MFD Program Officer Date: _____

Full Waiver Approved:

Partial Waiver Approved:

Director
Department of General Services Date: _____

Director
Department of General Services Date: _____

The Contractor submits this MFD Subcontractor Performance Plan (Plan Modification No. _____) in accordance with the Minority Owned Business Addendum to General Conditions of Contract between County and Contractor.

CONTRACTOR SIGNATURE

USE ONE:

1. TYPE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

2. TYPE CORPORATE CONTRACTOR'S NAME: _____

Signature

Typed Name

Date

I hereby affirm that the above named person is a corporate officer or a designee empowered to sign contractual agreements for the corporation.

Signature

Typed Name

Title

Date

APPROVED:

Director, Department of General Services

Date

Section 7.3.3.4(a) of the Procurement Regulations requires:

The Contractor to notify the Director, Department of General Services of any proposed change to the Subcontractor Performance Plan.

ATTACHMENT E

OFFEROR'S CERTIFICATION OF COST AND PRICE

The Director, Department of General Services, has the authority to require that contract cost and pricing principles are followed. Cost and Pricing Data must be submitted by offerors or contractors in the attached format prior to the execution of any contract or contract amendment based on the following:

1. A competitively negotiated contract valued at more than \$100,000.
2. A non-competitive contract valued at more than \$50,000.
3. Any contract modification for which the price adjustment is expected to exceed \$50,000, except contract modifications that are fully in accordance with the terms and conditions of the contract.
4. Any other contracts or contracts modification, as may be required by the CAO or Director.

OFFEROR'S CERTIFICATION

This cost proposal reflects our best estimates and/or actual costs as of this date and conforms to the cost exhibits and schedules provided by the County's Office of Procurement. By submitting this proposal, the offeror grants the contracting officer or an authorized representative the right to examine, as the basis for pricing that will permit an adequate evaluation of the proposed price, books, records, documents, and other types of factual information, if specifically referenced or included in the cost proposal.

The offeror also agrees that the price to the County, including profit or fee, may, at the option of the County, be adjusted to reduce the price to the County to the extent that the price was based on inaccurate, incomplete, or non-current data supplied by the offeror.

Name

Title

Name of Firm

Date of Submission

Signature of Authorized Representative

COST AND PRICE REQUIREMENTS

By submitting your proposal, you, if selected for negotiation, grant the Contracting Officer or an authorized representative the right to examine those books, records, documents and any other supporting data that will permit adequate evaluation of the proposed price. This right may be exercised at any time prior to award of a contract. The Montgomery County Government may utilize an independent contractor for cost and price analysis or to examine your books and records.

The Cost/price for any resultant contract will be negotiated on the basis of the successful offeror's normal estimating and/or accounting system or the system set forth in Cost Accounting Standards Board Disclosure Statement as required by Public Law 100-679.

Prior to contract execution, the intended awardee may be required to provide the following information;

- A. Latest and previous year's financial statement or profit and loss statement.
- B. Burdened rate verification detailing the composition and value of the elements of Fringe Benefits, Overhead, General and Administrative Overhead, Profit or Fee.

ATTACHMENT F

MANDATORY INSURANCE REQUIREMENTS

MANDATORY INSURANCE REQUIREMENTS –

Operation, Management and Marketing of a Public Market and Related Activities on the Silver

Spring Veterans Plaza - Organize and Direct Setting Up of Vendors, Market Layout and Schedule Events, Maintenance and Financial Responsibility, Misc

Prior to the execution of the contract by the County, the proposed awardee must obtain at their own cost and expense the following insurance with an insurance company/companies licensed to do business in the State of Maryland and acceptable to the Division of Risk Management. This insurance must be kept in full force and effect during the term of this contract, including all extensions. The insurance must be evidenced by a certificate of insurance, and if requested by the County, the proposed awardee/Contractor shall provide a copy of the insurance policies. The Contractor's insurance shall be primary.

Commercial General Liability

A minimum limit of liability of ***one million dollars (\$1,000,000)***, combined single limit, for bodily injury and property damage coverage per occurrence including the following coverages:

- Contractual Liability
- Premises and Operations
- Independent Contractors
- Products and Completed Operations

Workers' Compensation/Employer's Liability

Meeting all statutory requirements of the State of Maryland Law and with the following minimum Employers' Liability limits:

Bodily Injury by Accident - \$100,000 each accident

Bodily Injury by Disease - \$500,000 policy limits

Bodily Injury by Disease - \$100,000 each employee

Additional Insured

Montgomery County, Maryland, its elected and appointed officials, officers, consultants, agents and employees must be named as an additional insured on Contractor's Commercial and Excess/Umbrella Insurance for liability arising out of contractor's products, goods and services provided under this contract.

Policy Cancellation

Should any of the above policies be cancelled before the expiration date thereof, written notice must be delivered to the County in accordance with the policy provisions.

Certificate Holder

Montgomery County, Maryland
Jewru Bandeh, Operations Manager
Silver Spring Civic Building
1 Veterans Place
Silver Spring, MD 20910

ATTACHMENT G

Wage Requirements for Services Contract Addendum to The General Conditions of Contract Between County and Contractor

- A. This contract is subject to the wage requirements of Section 11B-33A of the Montgomery County Code. A County contract for the procurement of services must require the contractor and any of its subcontractors to comply with the wage requirements of this Section, subject to exceptions from coverage for particular contractors noted in 11B-33A(b) and for particular employees noted in 11B-33A(f).
- B. Conflicting requirements (11B-33A(g)): If any federal, state, or County law or regulation requires payment of a higher wage, that law or regulation controls. If any applicable collective bargaining agreement requires payment of a higher wage, that agreement controls.
- C. Nonprofit organizations who are exempt from the wage requirements under 11B-33A must specify the wage the organization intends to pay to those employees who will perform direct, measurable work under the contract, and any health insurance the organization intends to provide to those employees.
- D. A contractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor, to avoid the imposition of any requirements in 11B-33A.
- E. Each contractor and subcontractor covered under 11B-33A must: certify that it is aware of and will comply with the applicable wage requirements; keep and submit any verifiable records necessary to show compliance; and conspicuously post notices, approved and/or supplied by the County, informing employees of the wage requirements.
- F. An employer must comply with Section 11B-33A during the initial term of the contract and all subsequent renewal periods and must pay an increase adjustment in this wage rate, if any, automatically effective July 1 of each year. The County will adjust the wage rate by the annual average increase in the Consumer Price Index for all urban consumers for the Washington-Baltimore metropolitan area, or successor index, for the previous calendar year and must calculate the adjustment to the nearest multiple of 5 cents.
- G. An employer must not discharge or otherwise retaliate against an employee for asserting any right or filing a complaint of a violation, under the wage requirements.
- H. The sanctions under Section 11B-33(b), that apply to noncompliance with nondiscrimination requirements, apply with equal force and scope to noncompliance with the wage requirements under 11B-33A.
- I. The County may assess liquidated damages for any noncompliance by contractor with the Section 11B-33A wage requirements at the rate of 1% per day of the total contract amount, or for a requirements contract, the estimated annual contract value, for each day of the violation. This liquidated damages amount includes the amount of any unpaid wages, with interest. In the event of a breach of contract under this paragraph, the Contractor must pay to the County liquidated damages noted above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor. In addition, the contractor is jointly and severally liable for any noncompliance by a subcontractor. Furthermore, Contractor agrees that an aggrieved employee, as a third-party beneficiary, may by civil action enforce the payment of wages due under the Section 11B-33A wage requirements and recover from Contractor any unpaid wages with interest, a reasonable attorney's fee, and damages for any retaliation for asserting any right or claim under the 11B-33A wage requirements.
- J. The Director may conduct random audits to assure compliance with Section 11B-33A. The Director may conduct an on-site inspection(s) for the purpose of determining compliance.
- K. If the Contractor fails, upon request by the Director, to submit documentation demonstrating compliance with Section 11B-33A to the satisfaction of the Director, the Contractor is in breach of this contract. In the event of a breach of contract under this paragraph, upon request by the County, the Contractor must pay to the County liquidated damages noted in paragraph I. above, in addition to any other remedies available to the County. Contractor and County acknowledge that damages that would result to the County as a result of a breach under this paragraph are difficult to ascertain, and that the liquidated damages provided for in this paragraph are fair and reasonable in estimating the damage to the County resulting from a breach of this paragraph by Contractor.

Wage Requirements Certification
(Montgomery County Code, Section 11B-33A)

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Please provide in the spaces below the contact name and information of the individual designated by your firm to monitor your compliance with the County's wage requirements, unless exempt under Section 11B-33A (b) (see section B. below):

Contact Name			Title	
Phone Number		Fax Number		
E-mail Address				

YOU MUST MARK ☒ ALL BOXES BELOW that apply in the event that you, as an "Offeror," are awarded the contract and become a "Contractor":

☐ A. Wage Requirements Compliance

This Contractor as a "covered employer" will comply with the requirements under Section 11B-33A, Wage Requirements. Contractor and its subcontractors will pay all employees not exempt under the wage requirements, and who perform direct measurable work for the County, the wage requirements effective at the time the work is performed. The proposal price(s) submitted under this solicitation include(s) sufficient funds to meet the wage requirements. A "covered employer" must quarterly (January, April, July and October for the prior quarter) submit certified payroll records for all employees, and any subcontractor employees, governed by the Wage Requirements Law, for each payroll period to the Office of Business Relations and Compliance, Attn: Wage Program Manager. These payroll records must include the following: name; address; position/title; daily straight time hours worked; daily overtime hours worked; straight time hourly pay rate; overtime hourly pay rate; any deduction for health insurance; total gross wages paid for each period; and total net wages paid after any additions and deductions for each pay period.

☐ B. Exemption Status (if applicable)

This Contractor is exempt from 11B-33A, "Wage Requirements," because it is:

1. Reserved [Intentionally left blank].
- ☐ 2. a contractor who, at the time a contract is signed: has received less than \$50,000 from the County in the most recent 12-month period; and will be entitled to receive less than \$50,000 from the County under that contract in the next 12-month period. Section 11B-33A (b) (2).
- ☐ 3. a contract with a public entity. Section 11B-33A (b) (3).

- ☐ 4. a contract with a nonprofit organization that has qualified for an exemption from federal income taxes under Section 501(c) (3) of the Internal Revenue Code. Section 11B-33A (b) (4) (**must complete item C below**).
- ☐ 5. an employer to the extent that the employer is expressly precluded from complying with this Section by the terms of any federal or state law, contract, or grant. Section 11B-33A (b) (8) (**must specify the law, or furnish a copy of the contract or grant**).
- ☐ C. Nonprofit Wage & Health Information
This Contractor is a Nonprofit organization that is exempt from coverage under Section 11B-33A b) (4). Accordingly, the contractor has completed the 501(c) (3) Nonprofit Organization's Employee's Wage and Health Insurance Form which is attached. See Section 11B-33A(c) (2).
- ☐ D. Nonprofit's Comparison Price(s) (if desired)
This Contractor is a Nonprofit organization that is opting to pay its covered employees the hourly rate specified in the wage requirements. Accordingly, Contractor is duplicating the blank quotation sheet on which it is submitting its price(s) in the IFB, and is submitting on this duplicate form its price(s) to the County had it not opted to pay its employees the hourly rate specified in the wage requirements. For bid evaluation purposes, this price(s) will be compared to price(s) of another Nonprofit organization(s) that is paying its employees an amount consistent with its exemption from paying the hourly rate under the wage requirements. This revised information on the duplicate quotation sheet must be clearly marked as your Nonprofit organization comparison price(s). In order to compare your price(s), the revised information on the duplicate quotation sheet must be submitted with your bid, must show how the difference between your price(s) and your Nonprofit organization comparison price(s) was calculated, and will not be accepted after the bid opening date. See Section 11B-33A(c) (2).
- ☐ E. Wage Requirements Reduction (if applicable)
This Contractor is a "covered employer", and it desires to reduce its hourly rate paid under the wage requirements by an amount equal to, or less than, the per employee hourly cost of the employer's share of the health insurance premium. Contractor certifies that the per employee hourly cost of the employer's share of the premium for that insurance is: \$ _____. See Section 11B-33A(d).

Contractor Certification

CONTRACTOR SIGNATURE: Contractor submits this certification form in accordance with Section 11B-33A of the Montgomery County Code. Contractor certifies that it, and any and all of its subcontractors that perform services under the resultant contract with the County, adheres to Section 11B-33A of the Montgomery County Code.

Authorized Signature		Title of Authorized Person	
Typed or printed name		Date	

**501(c) (3) Nonprofit Organization's Employee's
Wage and Health Insurance Form**

Business Name					
Address					
City		State		Zip Code	
Phone Number		Fax Number			
E-Mail Address					

Please provide below the employee labor category of all employee(s) who will perform direct measurable work under this contract, the hourly wage the organization pays for that employee labor category, and any health insurance the organization intends to provide for that employee labor category:

Employee Labor Category	Wage per Hour	Name of Health Insurance Provider(s) and Plan Name* (e.g. ABC Insurer, Inc. , HMO Medical and Dental)

NOTE: IF NO HEALTH INSURANCE PLAN IS PROVIDED PLEASE STATE "NONE".

ATTACHMENT H

Prevailing Wage Requirements for Construction Contract Addendum to the General Conditions of Contract between County and Contractor

The Contractor and all Subcontractors must comply with the Prevailing Wage Law contained in Chapters 11B-33C and 20-75 of the Montgomery County Code. Prevailing wage means the wage rate paid by employers that is determined by a governmental authority, based upon a particular geographic area, for a given class of labor and type of project. The purpose of a prevailing wage is to ensure that construction workers who work on public works contracts are paid the going rate for their services. The prevailing wage rates are established by the State of Maryland and apply to all of the Contractor's employees and any and all Subcontractors. The Contractor and all Subcontractors must comply with all of the requirements of the Prevailing Wage Law including, but not limited to, the following:

1. Pay employees the prescribed rate as annually established by the State of Maryland Commissioner of Labor and Industry; the prevailing wage rates in effect on the date a solicitation is issued will apply throughout the term of a contract resulting from that solicitation.
2. Pay employees overtime for work more than 10 hours in any single day, work more than 40 hours in a work week, or work on Sunday or legal holiday;
3. Classify employees in their proper work classification in conformance with the schedule established by the State of Maryland Commissioner of Labor and Industry;
4. Electronically submit payroll records through www.LCPTracker.net, within 14 days after the end of each payroll period, to verify that Prevailing Wage rates have been paid to employees. The payroll records must include the following:
 - A. The name, address and telephone number of the Contractor or Subcontractor;
 - B. The name and location of the job;
 - C. Each employee's:
 - a. Name;
 - b. Current address unless previously reported;
 - c. Specific work classification;
 - d. Daily straight time and overtime hours;
 - e. Total straight time and overtime hours for the payroll period;
 - f. Rate of pay;
 - g. Fringe benefits by type and amount;
 - h. Gross wages.
5. If a Contractor or any Subcontractors are late in submitting copies of any payroll records required to be submitted under the Prevailing Wage Law, the County may deem Contractor's invoice(s) submitted to the County for payment unacceptable until the Contractor and Subcontractors provide the required records; and, the County may postpone processing payments otherwise due under the Contract or under an agreement to finance the Contract;
6. The Contractor and all Subcontractors must retain all payroll records for a period not less than five (5) years after the Work is completed;
7. The County may inspect the payroll records at any reasonable time and as often as it deems necessary;
8. The County may perform random or regular audits and investigate any complaint of a violation of the Prevailing Wage Law;
9. In the event the County determines that a provision of the Prevailing Wage Law has been violated, the County may withhold payment to the Contractor in an amount sufficient to pay each employee of the Contractor or any Subcontractors the full amount of wages due under the Prevailing Wage Law, and an amount sufficient to satisfy a liability of a Contractor or any Subcontractors for liquidated damages as provided under the Prevailing Wage Law, pending a final decision on the violation by the County;
10. Contractor may appeal a written decision of the Director, Department of General Services, that the Contractor violated a provision of the Prevailing Wage Law to the Chief Administrative Officer ("CAO"), within ten (10) days after receiving a copy of the

decision. The CAO must designate a hearing officer to conduct a hearing upon receipt of a timely appeal. If the Contractor does not appeal a written decision within ten (10) days after receipt, the decision of the Director, Department of General Services, becomes final and binding;

11. Contractor and all Subcontractors must not discharge, or otherwise retaliate against, an employee for asserting any right under the Prevailing Wage Law or for filing a complaint of a violation;

12. An aggrieved employee is a third-party beneficiary of this Contract and the employee may by civil action recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee; and

13. Each Contract subject to the Prevailing Wage Law may specify the payment of liquidated damages to the County by the Contractor and any Subcontractors for any noncompliance with the Prevailing Wage Law. Liquidated damages are: \$10 for each calendar day that the payroll records are late; \$20 per day for each day that an employee is misclassified; and \$50 per violation of the requirement to post the prevailing wage rates at the work site.



Attachment J



**Interagency Coordinating Board for Community Use of Public Facilities
Montgomery County**



Facility Use License Agreement
Silver Spring Civic Building and Veterans Plaza

RECITALS

- R-1. In Montgomery County, the Interagency Coordinating Board ("ICB") for Community Use of Public Facilities makes available to the community the use of schools and other public facilities as designated by the Chief Administrative Officer. The Office of Community Use of Public Facilities ("CUPF") administers and implements the ICB's policies, procedures and guidelines.
- R-2. The Chief Administrative Officer has designated the Silver Spring Civic Building and Veteran's Plaza ("Facility") as a facility to be scheduled by CUPF.
- R-3. This Agreement governs the terms and conditions under which CUPF will make available to the community the use of the Facility.
- R-4. The term "User" means the person or entity to whom a permit for the use of the Facility has been issued and all invitees of that person or entity and any persons using the Facility during the time that the permit is in effect.
- R-5. The term "County" includes the County's boards, agencies, officials, and employees.

AGREEMENT

The User agrees to the following:

- 1. The User must apply for and obtain a permit for the use of the Facility and may use the Facility only during the time period stated on the permit.
- 2. The User must pay the appropriate fees, as set forth in the current fee schedule, including any security deposit, in full with the Application. A security deposit is required for the Great Hall and kitchen rentals and Veteran's Plaza. Checks, money orders and MasterCard or Visa payments are accepted. The current Community Use of Public Facilities Fee Schedule is available online at <http://www.montgomerycountymd.gov/cupf> and at CUPF's offices.
- 3. CUPF will assess a late penalty on all amounts overdue in excess of 30 calendar days as specified in its policy on late fees.
- 4. Failure to make a payment by the required date constitutes a cancellation and is subject to the applicable cancellation policy.
- 5. The User must arrange for additional security coverage if deemed necessary by CUPF. The User will be responsible for making all security arrangements where additional security will be provided by police officers of the Montgomery County Police Department.
- 6. The User will abide by all Montgomery County noise ordinances. See <http://www.montgomerycountymd.gov/content/dep/Publications/pdf/compliance.pdf>.
- 7. Inclement weather credits for indoor use will be issued only if Montgomery County Government closes the facility. For verification, check CUPF's website at www.montgomerycountymd.gov/cupf or call MC311. Information will also be recorded on 240.777.2710.
- 8. Inclement weather credits for outdoor use will be issued when the Veteran's Park and Civic Building Courtyard is closed by the Silver Spring Regional Service Center.
- 9. The User must:
 - a. comply with all directions and conditions given by CUPF
 - b. ensure that the activity conforms to the use described in the Application
 - c. remain at the site during the Activity and carry the CUPF permit on his or her person during the Activity
 - d. adequately supervise and maintain orderly conduct among the persons attending the Activity covered by the permit
 - e. obtain and pay for any necessary licenses and permits, including licenses and permits required to distribute food, serve alcohol, sell goods, conduct fundraisers, sponsor a performance or other large public gathering. The User is liable for any applicable taxes, fees, and similar costs related to obtaining these permits. User is responsible for ensuring that any company or service providers in their employ such as caterer, event supplier, photographer/videographer, etc. are in compliance with state and local laws and regulations
 - f. comply with all applicable federal, state, and local laws, rules, regulations, and guidelines, including regulations and guidelines issued by the ICB. This includes compliance with all applicable federal, state, and local nondiscrimination laws, including Title VII of the 1964 Civil Rights Act and the Americans with Disabilities Act of 1990.

Silver Spring Civic Building Facility Use License Agreement, cont.

The User must keep the program or activity open to the public as required by State law, and must not discriminate on the basis of race, color, creed, religion, ancestry, national origin, age, sex, marital status, disability, or sexual orientation

10. Use Requirements/Restrictions

The Activity must not:

- a. present a clear and present danger to public safety or to the peace and welfare of the community, the county and/or the state;
- b. present a danger of damage to public or private property;
- c. constitute a public nuisance or create a traffic hazard;
- d. provoke or add to a public riot or breach of peace;
- e. The following are prohibited at all times:
 - i. Smoking on premises, including Veteran's Plaza and ice rink areas;
 - ii. Equipment or performances that are risky, including, for example, a high wire act, "dare-devil" stunts, and the use of tall platforms;
 - iii. Weapons/firearms/ammunition, except by officers of the law acting in an official capacity, or use of controlled substances;
 - iv. Excessive noise, public disruption, or activity that may do harm;
 - v. Unauthorized use or possession of alcoholic beverages;
 - vi. Use of alcohol outside the approved designated area(s);
 - vii. Gambling--bingo, lotteries, etc. except as permitted by state law with appropriate permits and/or licenses;
 - viii. Animals except for service animals, without permission;
 - ix. Cooking on premises.
- f. User is responsible for obtaining necessary permits, where applicable, from the Montgomery County Department of Fire and Rescue Service.
- g. Users may not use Veteran's Plaza when any of the following conditions exist:
 - i. CUPF has cancelled the Use
 - ii. Lightning is occurring
- h. Health and Safety: The user must provide at their own expense:
 - i. Security using off-duty Montgomery County Department of Police officers where required by CUPF. The number hired must meet or exceed the requirements of the permit.
 - ii. Provide a minimum of one portable bathroom per 100 attendees, up to a maximum of 5 where required by CUPF. At least one unit must be handicapped accessible. Units must be placed only in designated areas and removed within 24 hours of the conclusion of the event.
 - iii. Users must provide adequate supervision of participants

11. Posting and Distribution of Signs and Advertisements:

- a. The User may only place temporary signs on Facility grounds during the actual hours of the scheduled Activity, except where approval has been specifically granted by the County. At the conclusion of the use of the Facility, the User must immediately remove the signs
- b. The User, and any person acting under the User's authority, must comply with all applicable sign laws, including laws regarding the placement of signs upon utility poles, trees, fences or on municipal, county or state rights-of-way
- c. The User must clearly identify on all advertising materials the name of the User, the name of any individual or User sponsoring the use, and the purpose of the use. A User may not use initials, abbreviations or logos which are not expressly defined in the advertising material. The purpose of the use must be clearly stated and must conform to the purpose identified in the Application for Use. With the exception of Government Agencies clearly identifying their sponsorship, all announcements and advertisements must include the following statement: *This activity is not sponsored by, associated with, or endorsed by Montgomery County Government*

12. Certification Regarding Activities Involving Minors. This section applies only to Activities involving minors (under 18).

- a. The User certifies no one who will have any contact with minors during the Activity has ever been convicted of or pleaded (1) guilty, (2) "no contest" or (3) nolo contendere to a felony (whether or not resulting in a conviction)
- b. The User certifies no one who will have any contact with minors during the Activity has ever been convicted of or pleaded (1) guilty, (2) "no contest" or (3) nolo contendere to a misdemeanor involving sexual misconduct (whether or not resulting in a conviction)
- c. The User must provide an adequate number of chaperones for youth oriented programs

13. Restoration of Property. The User must restore the Facility to its prior condition upon completion of its use and prevent the waste or deterioration of the Facility. Failure to restore property to the prior condition will result in the loss of the security deposit or other fines.**14. Inspection and Investigation.** The User must permit the County to inspect the Facility at any time to ensure compliance with this Agreement. CUPF may examine the User's records to determine and verify compliance with this Agreement and to resolve or decide any claim or dispute arising under this Agreement. The User must cooperate with any investigation by CUPF.

Silver Spring Civic Building Facility Use License Agreement, cont.

15. **Termination/Modification.** CUPF may deny the requested use, unilaterally terminate or modify this Agreement, and/or preclude (temporarily or permanently) User from future use of one or more facilities, upon written notice to the User, for any of the following reasons:
- User, or any Person acting under the User's authority, misused, damaged, or destroyed County property or failed to leave the Facility as clean as it was before the Activity
 - User or any Person acting under the User's authority provided false or misleading information to CUPF, including false or misleading information about the User or the proposed use
 - CUPF assessed damages against the User or any Person acting under the User's authority
 - CUPF deems the use inappropriate for the Facility, inconsistent with the size, location, and available services at the Facility, or inconsistent with public health, safety, or welfare standards
 - User or any Person acting under the User's authority failed to fully complete or comply with the Agreement or a previous Agreement, including non-payment by virtue of a returned check or failure to make scheduled payments
- Termination is effective 10 calendar days after the notice is issued, unless a different time is given in the notice. The County is not responsible for User's losses as a result of termination or modification under this section, excepting a refund of any fees User paid to CUPF for the use of the Facility.
16. **Refunds/Cancellations.** CUPF will refund fees paid by the User to CUPF to permit the use of the Facility in accordance with its cancellation policy but only if the User completes a Cancellation/Adjustment request and submits to CUPF within the time frame noted. The User must pay CUPF the cancellation fee set forth in the fee schedule for each Facility. In the event of cancellation by CUPF, the User's account will be credited in full. **CUPF is not responsible for advertising, food, or any other costs associated with an Activity when Facilities are closed due to inclement weather or other emergency.**
17. **Accidents or Damage.**
- Notice of Accidents or Damage. User must give the County prompt written notice of any accidents or injury upon, or damage to, the Facility
 - Responsibility for Accidents or Damage. User is financially responsible for any loss, personal injury, death, or any other damage (including incidental and consequential) arising from the exercise by it, or any person acting under the User's authority, of the right of access under this Agreement or arising out of a breach of this Agreement by User. The County will determine the dollar amount in the case of property damage to the Facility and will charge the User accordingly. User must reimburse the County for any damage to the Facility within 30 calendar days after notice from the County
18. **Indemnification.** User and its agents agree to indemnify, defend, and hold harmless the County from any loss, injury, liability, damage, claim, lien, cost or expense, including reasonable attorneys' fees and costs, arising from the use of the Facility by the User, any person acting under the User's authority, or by any person in the facility as a participant or potential participant in any activity the User conducts in the Facility or arising out of a breach of this Agreement by the User. The User's foregoing responsibility to indemnify and hold harmless the County extends to any incidents resulting from the failure to use caution near architectural structures such as a raised stage or stairs. This agreement to indemnify and hold harmless the County will survive expiration and termination of this Agreement.
- User need not indemnify, defend, or hold harmless the County for any loss, cost, damage, claim, or other expense arising out of the County's sole negligence or intentional misconduct.
19. **Insurance.** The County reserves the right, in its sole discretion, to require the User to maintain insurance, as specified below, or an amount determined by the County's Division of Risk Management sufficient to indemnify, defend and hold the County harmless as required above, with an insurance company licensed to do business in Maryland.
- The User must maintain a policy of commercial general liability insurance with limits of at least \$300,000 for each occurrence and an aggregate amount of \$300,000;
 - If alcohol of any kind is served, the User (and the event planner) must also maintain a policy of liquor liability insurance with limits of at least \$300,000 per occurrence;
 - Policies must list Montgomery County as an additional named insured;
 - The User must provide CUPF with a copy of the certificate of insurance within 10 calendar days following submission of the completed Application;
 - The insurance certificate must show at least a thirty day's notice to the County for cancellation or modification;
 - Nothing in this Agreement may be construed to create any rights or claims in any third parties.
20. **Release.** User releases the County from all claims and demands of any kind which User has had, claims to have had, or might subsequently accrue to the User arising from the use of the Facility by the User, or any person acting with the User's knowledge or consent or arising out of a breach of this Agreement by the User. The County accepts no responsibility for any equipment or materials left at the Facility by the User. The release does not include any claim arising out of the County's intentional misconduct.

*Silver Spring Civic Building Facility Use License Agreement, cont.***21. Other Provisions.**

- a. **Modification and Waiver.** Except where expressly provided to the contrary, any amendment of this Agreement must be in writing, signed by the Parties. A party wishing to waive any rights under this Agreement must do so expressly in writing. A waiver will be narrowly construed so as not to waive any other rights or any other instance to which that right might apply
- b. **Severability.** Whenever possible, each provision of this Agreement must be interpreted in such a manner as to be valid under applicable law. But if any provision of this Agreement is deemed invalid, that provision must be severed, and the remaining provisions must otherwise remain in full force and effect
- c. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. All terms and conditions contained in any other writings previously executed by the Parties and all prior and contemporaneous arrangements and understandings between the Parties are superseded by this Agreement. No agreements, statements, or promises about the subject matter of this Agreement are binding or valid unless they are contained in this Agreement
- d. **Applicable Law.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Maryland without regard to its conflict of law principles. For purposes of litigation involving this contract, exclusive venue and jurisdiction must be in the Circuit Court for Montgomery County, Maryland or in the District Court of Maryland for Montgomery County
- e. **No Agency.** This Agreement does not make either one of the Parties, its officers, employees or agents, an officer, employee or agent of the other Party
- f. **No Partnership, Third Parties.** This Agreement does not create any partnership, joint venture or other arrangement between the Parties. This Agreement is not for the benefit of any non-party, and no third party has any right or cause of action under this Agreement
- g. **Warranty of Authority.** The persons executing this Agreement warrant that they are authorized by the respective party whom they represent to execute this Agreement
- g. **Effective Date.** This Agreement is effective after it is signed by all Parties
- h. **Transfer.** The User must not transfer this Agreement by assignment, sublease, or otherwise without the express written consent of CUPF
- i. **Incorporation of Documents and Recitals.** The recitals and any exhibits are incorporated by reference and made a part of this Agreement

I have read, understand, and agree to the provisions of this Agreement. I declare that all of the information provided is true and complete and authorize CUPF to verify this information. I understand that if I make any false statement on the application, CUPF may reject the application, immediately terminate the use, and preclude me and/or the User from future use of County facilities. It is further understood and agreed that any other person scheduling space on behalf of the below User agrees to abide by the terms and conditions of this Agreement.

The person executing this Agreement on behalf of the User must present identification.

The provisions set forth in this Facility Use License Agreement are hereby acknowledged and agreed upon this _____ day of _____, 20____.

Signature:

(Sign Name)_____

(Print Name)_____

(Print Name of Organization)_____

6/2011

Community Use of Public Facilities, 600 Jefferson Plaza, Suite 300, Rockville, Maryland 20852
www.montgomerycountymd.gov/cupf